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ABSTRACT

These conference proceedings cover three general areas: (1) purposes and values of high school athletics, (2) the need for a definition of equality, and (3) the legal basis for athletics and evolving definitions of equality. Specific essays discuss topics such as the organization and legal basis for athletics; racial segregation in high school athletics; and sex discrimination in high school athletics. The appendices include excerpts from the Federal and State constitutions, laws and regulations, and bibliographies. (Author/AM)

EQUAL EDUCATIONAL OPPORTUNITY IN HIGH SCHOOL ATHLETICS

Conference Proceedings

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TABLE OF CONTENTS

PREFACE

The Program for Educational Opportunity is a university-based institute designed to assist school districts in the process of desegregation based on race, national origin, and sex. The Program, based at The University of Michigan, was established by the U.S. Office of Education pursuant to Title IV of the 1964 Civil Rights Act.

Besides providing in-district services on request and without charge to public schools in Michigan, the Program annually conducts a series of conferences.

Several conferences were held during the Winter and Spring of 1974-75 covering topics of critical importance to school board members, administrators, teachers, students, and community.

Papers from these conferences are incorporated into two sets of proceedings entitled:

The Supreme Court and Due Process in School Discipline

Equal Educational Opportunity in High School Athletics: Eliminating Discrimination Based on Race and Sex.

To the consultants from professional associations, governmental agencies, university communities, and practicing educators and attorneys, the Program expresses its appreciation for their sharing of experience and dedication to the proposition of equal educational opportunity.

Special appreciation is due Dr. Wilbur Cohen, Dean of the School of Education, for his continuing interest and support of the Program.

Finally, contributions of the individuals responsible for the planning and coordinating of the conferences and these proceedings are acknowledged.

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INTRODUCTION

Charles D. Moody, Sr.*

Athletics have long been considered the means by which Americans learn fair play and all the virtues needed to ensure the continuation of our democratic principles. Upon close examination, however, we find athletics to be an area where the denial of opportunity is ever present--denial of opportunity based on race, sex, and national origin.

John Behee's Hail to the Victors (Adrian, MI: Swenk-Tuttle, 1974, p. 130-33) points out the racial prejudice experienced by Black athletes through the years at Michigan. In the entire history of Michigan baseball from the 1880's to 1972, only seven Black athletes received letters; only six Black athletes lettered in football at Michigan through 1949. There were five Black wrestlers at Michigan through 1952, hockey had none through 1972, gymnastics one, golf none, tennis two (one in 1928 and one in 1934), swimming one. Basketball was the last of the major sports to open up to Blacks at Michigan. Until the 1960's, it was rare to see a Black cheerleader at an integrated school.

These data reflect the situation at the college level. The same kinds of things are happening at the high school level. Note the headlines in the Detroit News of January 22, 1974: "Meager Schedule Plagues Black Cage Team--Class D Power Mirrors Problems of Society." Because their league had been dissolved, the Covert basketball team was looking for games to play--everyone had found a new league but them.

The budgets for men's and women's sports have been greatly out of balance. Ellen Weber, in "God Bless You, Title IX" (Women's Sports, September 1974, p. 36-7), points out the discrepancies: University of California, Berkeley--men's budget $2.1 million, women's $50,000; Tucson High--$17,000 for boys, about $1,000 for girls; Shorewood School District in Milwaukee--$20,000 for boys, $4,000 for girls. Bake sales, candy sales, and car washes are not requirements for men's teams, but female athletes frequently are forced to use such fund-raisers to make enough money for their uniforms, equipment, or travel. Are these examples of fair play?

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The inequality of opportunities for males and females is now being made public. Title IX has caused many coaches and athletic directors pain, for what was assumed to be the way things should be has proved not only morally wrong but also illegal.

The following proceedings are from a conference on Equal Educational Opportunity in High School Athletics sponsored by the Program for Educational Opportunity. The three general areas covered in these proceedings are: 1) purposes and values of high school athletics, 2) the need for a definition of equality, and 3) the legal basis for athletics and evolving definitions of equality. Specific articles include: "The Organization and Legal Basis for Athletics," "Racial Segregation in High School Athletics," and "Sex Discrimination in High School Athletics: Constitutional Remedies." If the purposes and values of high school athletics are what we declare them to be, we had better pay close attention to the ideas and concepts advanced in these papers. We hope the excerpts from the federal and state constitutions, the laws and regulations, and the bibliographies included in the Appendices will prove helpful to readers as they move forward in their attempt to make equal educational opportunity in high school athletics a reality for all our students.

I. PERSPECTIVES ON THE PURPOSES AND VALUE OF HIGH SCHOOL ATHLETICS

REMARKS ON THE PURPOSE AND VALUE OF HIGH SCHOOL ATHLETICS

Joan E. Warrington*

It has been said about leadership that one of the problems in today's society is that the leader cannot be sure whether people are following or chasing. I suspect that each administrator, athletic director, and coach experiences both aspects of this phenomenon during his/her everyday involvement with the high school athletic program.

I think it is worthwhile to discuss the problems of girls' sports programs. I believe that the mushrooming of the girls' program has caused each one of us to reassess our positions as leaders, followers, and pursuers.

I believe that no one can challenge the fact that the girls' demand for equal opportunity in athletics has had a significant impact on programs, both at the high school and college level. No one would deny the problems which have resulted from that impact. The fact is that the demand for programs in girls' athletics has caused every organization and every individual to become accountable for existing programs and to consider equality in the addition of new ones.

Philosophically, if we believe that some good comes out of everything, then we must believe that a great deal of good is developing from the concept of equal opportunity for girls and women in athletics. While most of us wish we could dismiss the problems, we should accept that all of us who are involved in athletics have been forced to stop and take a look at the changing scene. We have been asked to review our values and to define the problems. Actually the definition of problems is the first step in seeking solutions. In the three years that the Michigan High School Athletic Association has been sponsoring State Tournaments for girls, the problems have emerged for identification, and the solutions are now being sought.

Probably the most often repeated statement among women who are involved in athletic programs is that girls want equal opportunity in athletics, but they do not want to make the same mistakes that the boys

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*Joan E. Warrington is the Assistant Director of the Michigan High School Athletic Association.

have made. Without dwelling on the problems as they exist at present, let me reiterate a few of the aspects of the boys' program as viewed from the critical public eye..

College coaches will state that one of the most distasteful parts of a college coaching job is the awarding of scholarships and the attendant recruiting pressures. In vying for the outstanding high school graduates, the mention of athletic scholarships introduces the whole can of worms, including the pressures of winning, of hiring the best available coaches, of securing the most talented athletes, of maintaining eligibility standards, of financing ever-expanding programs, and running spring practices, summer practices, and specialized summer camps, all designed to "keep up with the Joneses" in coaching.

In addition to the pressures within the college or high school setting, our athletes, boys and girls, have opportunities for extensive outside competition. In many instances our high school athletes make difficult choices between the appeal of playing a large number of contests in interstate and international competition, and that of representing a high school in the State Tournament competition.

The competition for the spectator dollar has become an increasingly significant factor in the stress on producing winning teams. For instance, in the second week in March, the general public had a choice between watching girls' and boys' gymnastics, the Boys' State Swim Meet, the Regional Hockey Tournament, the Final Wrestling Tournament, and Boys' Regional Basketball. These activities were all taking place in addition to the heavy professional schedule of the Detroit basketball and hockey teams, not to mention the tournaments sponsored by the many outside agencies in the State.

The expansion of professional athletics cannot go unmentioned in its relationship to direct and indirect influences on high school and college programs. The exploitation of professional athletes by money-making groups has been instrumental in changing the attitudes of highly skilled athletes and the values of prospective professional athletes who dream about signing large professional contracts.

Coaches' salaries have become items for bitter debate on the agenda of professional collective bargaining teams. The issues involve equity between men and women, between coaches and assistant coaches, and between coaches of team and individual sports.

The battle over facilities has become an endless exercise in frustration as men and women coaches seek equal time in a facility which must be shared with junior high teams, recreation teams, senior citizens, and other community programs.

Girls fought and won the battle to compete on boys' teams, and the nebulous definition of contact and non-contact sports became a very pertinent part of that decision. Some states have elected to defend their rules in a court of law until monies have been exhausted. Other states have long since waived their rules on co-ed competition regardless of non-contact or collision sports.

Concerns about crowd control are mounting in every administrative group that is charged with the responsibility of organizing and running athletic contests. It is disheartening, to say the least, to the administrators, coaches, players, and officials who are subjected to the abuse of ill-mannered fans.

In the Michigan High School Athletic Association, we are fortunate to have an outstanding group of athletic directors with whom to work. One of our most enthusiastic and dedicated high school athletic directors stated to me recently that he was contemplating resigning as athletic director. He indicated that, if he were to make that decision, it wouldn't be the problems of budget, facilities, travel, equipment, coaches, administrators, or school boards that forced him out; it would be the disheartening job of crowd control because it was no longer rewarding for him to put on an athletic contest.

In three years in the State of Michigan, girls' programs have gone from zero State Tournaments to eight State Tournaments in the 1974-75 school year, with a ninth one to be added in 1975-76. Now that that rapid expansion is about to level off, women have a chance to stop, take a deep breath, look around, and assess the current situation. Placed in perspective alongside the boys' program, the problems do not appear to be very different. Perhaps they are not present in the same magnitude, yet, but the problems are there, nonetheless.

Qualified women coaches are not readily available to high school athletics. Where coaches are available, administrators are hard-pressed to find slots for them as part of the high school faculty. There are some women in physical education who are reluctant to become involved in high-pressure coaching situations, but they still maintain teaching positions in the high school. Other women are demanding equal time in the gym and equal salaries. Yet, aside from playing the same number of contests as do the boys in a comparable sport, they are still hesitant to spend the rigorous hours in practice or to schedule athletic contests on weekends or to involve themselves in the dedication that is fundamental to the coaching profession.

Women's programs are expanding to include the employment of female athletic directors, trainers, coaches, and assistant coaches, but it will take some time before the colleges and universities are able to keep pace with the demand for those services.

When the decision was rendered to allow girls to participate on boys' teams, there were many people who supported that decision. They believed that highly skilled girls should have their opportunity to participate on boys' teams. Now that that same decision is affecting the girls' programs in reverse, because boys are seeking their opportunities to participate on girls' teams, that supportive position has weakened considerably. In the State of Michigan we have already seen boys participating on girls' gymnastics and volleyball teams, and it is anticipated that we will see their influence on girls' softball teams this spring.

The pressure of "keeping up with the Joneses" has been expressed in the expanding number of specialized summer camp programs for girls. We are already seeing the bandwagon effect in the brochures which advertise summer camps in basketball and volleyball.

College scholarships for athletics are now being awarded to girls in ever-increasing numbers. While not in the same proportion and in the same number, there is no question that the offering of scholarships has given impetus to recruiting problems in the competition for the talented high school athlete. Now that the lid has been removed from the can of worms, it seems just a matter of time before the Association for Intercollegiate Athletics for Women will need to focus its attention on the contents of the can.

All these problems must be explored, and answers must be sought. It would seem that the first responsibility for all concerned is to identify the objectives of the high school program and to place these objectives in a healthy perspective, one which provides equal opportunity for girls and boys. The determination of those objectives will dictate the direction for a school's athletic program.

Just recently a specially appointed Sports Seasons Committee met in the office of the Michigan High School Athletic Association. The charge to that Committee was to study the overall program currently offered by the State Association and to determine the need for and the extent of sports seasons limitations.

As you know, the State of Michigan has not functioned with beginning and ending dates for all sports. However, the Sports Seasons Committee not only recommended the establishment of beginning and ending dates for all sports, boys' and girls', but it also recommended maximum numbers of contests for each sport. The recommendations from that Committee will be reviewed by the Representative Council of the State Association during its May meeting. In the meantime, it behooves individual school personnel to review those recommendations. Already those recommendations that appeared in the issue of the March Bulletin have provoked much thinking and questioning among athletic officials. Many value judgments will be forthcoming as a result of them.

Administrators are raising such questions as: Does a 20-game basketball schedule meet the needs of boys and girls in a school? Is there a need to establish beginning and ending dates? Will a limited maximum schedule in a particular sport cause high school students to seek more extensive competition with an outside agency? Should high school students who represent their schools be restricted from outside competition once they have completed their high school schedule? Does any agency have a right to regulate the after-school participation of a student? After-school here can encompass the summer or evenings or weekends or after the high school practice is completed each day.

How these questions are answered will be determined by the stated objectives of that high school and by the values inherent in the program.

With the emphasis on equal opportunity, the time is now for school boards and administrators to assume a definite position on the purpose and value of athletics. In order for a comprehensive program to be offered to boys and girls equally, and in order for that program to meet the specialized needs of a large number of students, then a reordering of priorities is necessary.

I suggest to you that it is time for persons in leadership positions to become leaders and to assert themselves as such. It would seem that it is time to restore to high school athletics the real values of competition. As I see them, these include such indefinable qualities as pride, self-respect, dignity, self-achievement, challenge, self-realization, and self-satisfaction.

I sincerely believe that high school athletics do have a place in the educational community. Just as students achieve self-expression through their art, music, fine arts, and language programs, some students need to achieve their self-expression through athletics. Each one of us has gifts and talents which were meant to be explored and to be expressed. For the highly skilled athlete, those talents seek their expression through athletic opportunity. Such expression should not be permitted at the expense of every other phase of the development of a young student. It is the responsibility of leaders to provide that opportunity for self-expression but to maintain a perspective that is not unduly influenced by pressures of winning, by lucrative college scholarships, and by the appeal of professional careers.

Administrators, directors, coaches, equal opportunity is not found in the bonus baby, the hardship case, the college scholarship, or the professional contract. Equal opportunity is found in the guaranteed right that every individual has to develop fully as a human being, to be given the opportunity to

become a worthwhile contributing member of society, to find for himself or herself the pride in accomplishment and the self-respect that is necessary for each one of us to not only like ourselves, but to be able to live with ourselves.

The privilege of athletic competition is one means to that end.

THE PURPOSE AND VALUE OF HIGH SCHOOL ATHLETICS: I

Charles R. Thomas*

The subject, Equal Educational Opportunity in High School Athletics is most timely and it is a subject about which little real attention has been given relative to equal educational opportunity.

A former Illinois high school athlete, and later a football player and a track man at the University of Wisconsin, I spent eleven years as an assistant varsity high school coach in football and track at Evanston Township High School in Evanston, Illinois. While coaching, I also taught world history, and like most coaches, I became an administrator. I am presently Superintendent of Schools in North Chicago, Illinois. Also, I currently serve as the Wisconsin representative on a Special Advisory Commission to the Big Ten Athletic Conference.

I have said all of this because my background in athletics and academics has allowed me to view the problem of equal educational opportunity generally from close range. More important for our purposes today, my experiences have afforded me the opportunity to know, understand, and empathize with many of the problems today relative to equal educational opportunity in high school athletics.

Before addressing the topic "The Purposes and Value of High School Athletics", I wish to discuss two fundamental beliefs which I have relative to high school athletics:

1. The Student Athlete Concept

Most of us would agree that the main purpose of schooling is to educate through the use of meaningful experiences which prepare students for successful and productive adult lives. To this end, young people who happen to be athletes must see themselves as students first, and as athletes second. To think otherwise would be to believe that we are blessed with eternal youth and that athletics is our life rather than part of our life. You know as well as I that many athletes are lousy students because "they are expected to be," and little is demanded in the

*Charles Thomas is Superintendent of North Chicago Public Schools, North Chicago, Illinois.

way of academic achievement. Often the only real demand academically, is that the athlete stay eligible and does not get injured.

2. Mainstreaming the Athlete

High school athletics should be viewed as a vital part of the total high school learning experience. Due to the many myths and actual stories about superstardom in high school sports, it has been difficult to keep athletics and to view it in proper perspective. While it is true that some are more talented, those talented few should not be set apart from the other students by preferential treatment. Rather, high school athletes must remain a part of the student body and be treated as such - academically and socially. Athletic heroes are just that, "Athletic Heroes." What is more important is that the athletic hero today is able to survive as an ordinary citizen tomorrow. The athlete must become and remain in the mainstream of the high school society.

Now, some comments on the purposes and values of high school athletics. The purposes and values fall under several headings:

1. Educational - Athletics are often an extention of classroom activities. For some it is the catalyst that keep students in school. The lessons for life which are learned are many and varied. The sportsmanship and the recognition of the value of teamwork and the worth of the individual have done much to break down myths about race and culture.

2. Health - A properly administered program not only is good for the body conditioning, but teaches good health habits.

3. Economic - For many high school youngsters, athletics is really a means to an end. It is the ticket to a college education. The utilitarian value must be recognized and accepted. As long as athletics is used as a means to an end and is not an end in itself, the economic value is a good one and should be highly valued. In this sense it has provided an avenue to upward mobility to many disadvantaged youngsters.

As one who has been an athlete, a coach, and an educational administrator, I believe that athletics in high school is important as a part of the total school program. We as educators must be careful that those who participate are not exploited by the institution and that through participation the educational process continues so the student is the benefactor, not the victim.

THE PURPOSE AND VALUE OF HIGH SCHOOL ATHLETICS: II

John K. Cotton*

There is an inherent difficulty in assessing the values of athletics. Traditionally, athletics have been a universal form of involvement in which people participate but seldom spell out the meaning and significance of the experience. The purpose of this paper is not to defend the role of educational sports in our secondary school curriculum, but rather to do a little positive dissecting and evaluation of what I believe is a healthy organism without applying the scalpel to the jugular vein.

> For those who believe, no explanation is necessary. For those who do not believe, no explanation is possible.

> I favor exposing young people to situations that require the highest performance on a regular basis.
>
> While athletics are a manufactured environment, there comes that moment when you are face to face with doing. That moment--perhaps a fraction of a second--when you either do or you don't. --Justice Byron Whizzer White.

Hopefully, there is a common thread that will bind these quotations into a meaningful theme. I do believe in the values of athletics. Like Justice White, I believe the role of athletics is unique in our school program because it provides a manufactured environment, a subculture, where students are challenged to either do or don't--a face-to-face confrontation--a one-on-one situation. The student who elects to compete in athletics agrees to go:

1. one on one with the coach,
2. one on one with the rules of the game,
3. one on one with training rules,
4. one on one with his opponent, and
5. one on one with himself.

One on One with the Coach

Coaches come in all sizes, shapes, and philos-

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ophies. A student athlete soon realizes that, in the highly charged emotional arena of competition, the coach is the coach! The student must learn to react and cope with him.

One on One with the Rules of the Game

In this manufactured environment, athletics is a discipline where you succeed because of built-in fairness. Sports are quick to outlaw any unfairness that can be controlled by a rule.

The rules spell out how many shall compete for how long on what size field, court, or course.

In what other educational endeavor do we give every one an equal number of "at bats"?

Or starting from a scratch line?

Or equal distances to run?

Or the same number of downs?

Or the same number of serves?

One on One with Training Rules

This is the area where coaches preach the doctrine of "paying the price." The establishing of reasonable rules of conduct and training does not mean capitulation from "paying the price." You cannot teach desire, dedication, and discipline with wishy-washy rules.

One on One against Opponents

One of our greatest resources is the competitive heart born in athletic participation. All of us realize there is more to life than 32 minutes on a Friday night, but it does provide a lot of real life training.

One on One with Yourself

During competition, the young athlete learns to cope with success and failure.

In this athletic subculture, we have developed a discipline where youngsters can succeed in failure. Failing not once--but many times.

We think of a 300 average in baseball as a pretty good hitter--yet that average shows that in 7 out of 10 times, he has failed. If a runner in football gains 20 yards, someone failed to tackle. If a runner in football is thrown for a 5-yard loss, someone failed to block.

Young athletes develop a feeling toward pressure.

They do become clutch-worthy and sense a feeling of joy in being able to handle disaster.

These are some of the mysterious and elusive qualities that I feel are major outcomes of educational sports. The intangibles are difficult to assess, but, if you believe, who needs to explain?

> It is safer to be feared than loved if a choice must be made. Love is held by a chain of obligation which, men being selfish, is broken whenever it serves their purpose; but fear is maintained by a dread of punishment which never fails. --Machiavelli.

> I don't care how pure, how honest, or how good the cause is; if carried to an extreme, it becomes a fanaticism and obnoxious. --Bob Talbert.

> The essential ingredient of democracy is not doctrine but intelligence, not authority but reason, not cynicism but faith in man, faith in God. Our strength lies in the fearless and untiring pursuit of truth by the minds of men who are free. --David Lilienthal.

The MHSAA was founded in 1924 to "exercise control over the interscholastic athletic activities of all schools of the State." In 1972, a change in the law enabled school districts "to join any organization, association or league which has its object the promotion of sports or the adoption of rules for the conduct of athletic, oratorical, musical, dramatic, or other contests by or between school children if the organization, association or league provides in its constitution or by-laws that the superintendent of public instruction or his representative shall be an ex officio member of its governing body with the same rights and privileges as other members of its governing body."

The fourteen elected members to the Representative Council of the MHSAA represent all segments of the state's secondary schools. The primary function of the Council is to maintain rules and regulations that insure fairness in competition for the student athletes. Many rules have recently been revised or updated and are constantly being evaluated. The Council, in a sincere effort to be a viable representative body, continues to be responsive to requests for rule modifications from member schools, appointed committees, and coaches' associations. In all cases the policy of the Representative Council has been to seek the greatest good for the greatest number and to ensure that competition is conducted in a sportsmanlike atmosphere.

During the past five to ten years some time-honored rules, regulations, policies, and philosophies

of the MHSAA have come unglued. Those of us who belong to the "Geritol Super-Jock Set" have been peeking out the ear flaps of our helmets from the barrage of allegations and complaints.

Look what has happened during the past few years:

---after 47 years of iron-fisted control by our nationally respected and locally loved Charles E. Forsythe, one basketball player of questionable residence challenged the authority of the MHSAA in the courts,

--then problems arising from and court challenges about the long hair syndrome,

--then an entry blank for a Regional Track Meet is ordered changed by a court order,

--then the MHSAA is challenged in the Federal Courts on the grounds its rules pertaining to girls' sports violate the equal protection clause of the 14th Amendment of the United State Constitution.

We could go on. Court cases have multiplied; judges are dictating policy; legislators want a piece of the action. There are new sounds today:

--plaintiffs' claims of suffering irreparable injury,

--courts' issuance of temporary restraining orders,

--students' demands for declaratory judgments,

--assertions that disciplinary proceedings are contrary to due process.

Many times the decisions of the MHSAA are condemned because a "technicality" renders a player ineligible. I have often pondered, "What is a technicality?" Is failing to waive the age rule a "technicality?" Is failing to waive the outside competition rule a "technicality?" Is it a "technicality" when a schoolboy golfer accepts a gift of a dozen golf balls in the local club Father and Son Tournament?

Have you ever asked yourself the question: What makes a good rule?" I am quite sure that most of us would agree that rules are necessary if effective and fair treatment is to be afforded all schools and their participants. Perhaps that is the oversimplified answer: "Effective and fair treatment."

The common denominator to be applied in the decision-making process is that, when two schools or

their representatives are scheduled to compete, neither should have an unfair edge--they both start from scratch--no false starts!

As an observer and participant of Representative Council proceedings for the past fifteen years, I can state unequivocally that the Council has never knowingly been discriminatory toward any parochial, sex, or ethnic group. Its decisions have never been designed to be capricious or arbitrary. I am positive its goals have been to protect the best interests of all schools and their students. It has consistently attempted to combat the creeping cancers of educational athletics: commercialism, exploitation, and professionalism.

The problem with many do-good critics of our school athletic programs is that they are short on knowledge of the total program and in their "shoot from the hip" criticisms they create a great deal of havoc for the professionals.

In closing, the Scriptures tell us of a people whose "old men shall dream dreams and whose young men shall see visions." We do dream dreams of past achievements and near-greatness, but we must be ever mindful of the bright visions of our students. As coaches and administrators, we must continually gear up with greater visions and even greater determination to achieve the goals of our high calling. These goals and visions cannot be accomplished by the selfish ruling by fear of punishment of a Machiavelli or clinging to a cause until it becomes fanatical and obnoxious. They can be accomplished only be remembering the ideals of democracy as stated by a Lilienthal.

II. THE NEED FOR A DEFINITION OF EQUALITY

THE NEED FOR A DEFINITION: I

John Sydnor*

One of the very critical and statewide issues of our day is equal educational opportunity in athletics. I know of no topic which merits our close scrutiny and examination more than an appropriate addressment of this paramount and sometimes volatile issue. For those of us who represent districts victimized by racial isolation, the meaning and particularly the inequality of equal educational opportunity expresses itself in ways which are often counterproductive. Witness the crowd management problems at games which in many instances result from poor and incompetent officiating by officials. The state MHSAA is obviously at the point where they will have to give serious thought to preferential assignment of game officials and particularly to black officials. The business of defining athletic equal educational opportunity cannot and must not be any longer postponed. When one realizes the collective effort, time, and dollars expended in the cause of athletics, it is indeed a big portion of the educational business of this state.

In all too many instances, the great majority of Black and other minority group children attends schools that are largely segregated. The school environment of a child consists of all of the intangible as well as tangible factors from the child who sits next to him, to the teacher who stands in front of him, to the coach who coaches him. Also we must at some point address ourselves to the fundamental issue of how well our athletic programs reduce the inequity of birth by providing minority children an equitable foundation of skills and knowledge within the total spectrum of Michigan High School Athletic programs. Because we cannot overlook the economic aspect of athletics, equal opportunity in this area must also be viewed in light of career aspirations, goals, and desires.

How can a minority district believe that its best athletic interests are being served when it is presented with evidence that exclusionary efforts and practices have been entered into by surrounding district schools to avoid contact of any kind?

It is not by their own design that those districts

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so affected by racial isolation find themselves traveling across the state for better than fifty percent of the games comprising their schedule. Traveling several times a year to opposing school districts on round trips averaging 400 miles to participate in competitive athletics raises serious questions about equal opportunity. The costs involving bus drivers, meals, maintenance on buses, coaching, and supervisory personnel is inordinate and out of balance with monies expended on the rest of the student population. District expenditures are then spent disproportionately, and to a considerable degree this decreases the possibility to maximize available revenues on the total athletic program.

I am sure that each of us is keenly aware of the emphasis which our communities have placed on athletic programs, and this is particularly true of many disadvantaged communities. Parents, teachers, and students are aware of the mobility which athletic programs have provided for poor, disadvantaged, and minority persons.

The expansion of girls' athletics now expands that opportunity. How children feel about themselves, their motivations in school; their aspirations toward further education and toward desirable occupations are all orientations which are partly a result of the school. If a child's self-concept is affected by his success in school, I believe it is morally mandated that the State Department of Education and all of its legislative bodies give top priority to this topic. Since all of these qualities are desirable educational outcomes, and since the MHSAA is the regulatory body charged with supervising and establishing rules by which member schools will operate, we look to them for the leadership that must look at efforts which are inclusionary and not exclusionary.

So often district schools are tenaciously concerned about their local autonomy and the right to exercise control over the district's educational program. It appears to me that the State of Michigan has a legal and moral right to address the problem of "black-balling." There is no possible way that a minority school district can satisfy the many demands and so-called standards expected by league members as conditions to be met in order to meet entry requirements for league participation. Help in this area must come from the state. The local district has a bitter price to pay for airing its grievances publicly. Unless some direction is superimposed by the state regulatory bodies, we at the local level will be faced with this problem for a long, long time.

Because a growing number of districts are facing many of the problems characteristic of racially oriented minority districts, it is clear that preferential attention will have to be given to those districts to

alleviate many of the existing inequalities and inequities existent in those districts. It is further evident that equality of educational opportunity is not now a reality for many children in this great state.

THE NEED FOR A DEFINITION: II

Marcia Federbush*

Athletics are supposed to take place on playing fields, not be battle fields in our schools. Public school is not the place for males and females to compete to see which sex can provide the more educationally, psychologically, physically, or ethically sound program; which can take in more--or less--money; which can attract larger audiences; which can "cut" fewer students; or which can sponsor more games and practices and thus pay coaches more money.

Can the boys of a school play on a league that doesn't include girls?

Can men be paid 15% of base for coaching gymnastics and women only 5%? Or can a male athletic director receive 17% of contract pay with two released periods and secretarial help, and a female, 12% of base with no released periods or secretarial assistance?

Can boys be bused on a chartered bus 180 miles to a game while girls have to play with schools close to home and ride in car pools or raise money for transportation through bake sales?

Can women in decision-making positions continue to base their schools' athletic programs on the premise, "We don't want to make the same mistakes the men have made," and therefore to clamor for separate programs, separate competitive schedules, separate budgets, and mainly, separate philosophies? On the other hand, if men are making such big mistakes, can these be tolerated for our male youth?

When women say, "We want 'equal but separate,'" they mean equal in funding but separate in every other way. Can two programs with totally separate regulations, values, schedules, and contents cost the same to operate? Looking at it another way, if schools should suddenly announce, maybe with a little kick from the courts, "We're sorry we've been so negligent of women in the past. We shall henceforth budget exactly equal amounts for women and men in athletics," it's tempting to say, "The heck with equal opportunity. Let's just get the equal money." I asked one woman athletic director, "If you had the same amount of money to

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operate your program that the man director has, what would you do with it?" She said, "I'd hire a great bunch of coaches at a low salary to teach any girl any sport she wanted to learn. Then every girl in school would have an athletic activity of choice and the women could get experience in coaching while they were working with the girls." Is that equal opportunity?

Should boys have experienced, well-paid coaches imparting precision skills and girls have hard-working, dedicated, but minimally paid coaches who learn the skill alongside the girls? Will that guarantee equal quality, quantity, intensity, and goal direction of training?

Can an association governing athletics for boys and girls and for women and men staff members of the state claim to represent both sexes when its Representative Council is set up so that it can exist with only one woman out of 15 members? Can women staff decide that there will be no interscholastic program for ninth-grade girls while male staff decide that there will be one for boys?

For that matter, should the athletic program for girls be controlled by women and that for boys be controlled by men? Or, more probably, the athletic program for girls be controlled by men and women and that for boys be controlled by men? Or should decisions affecting both our male and female children be made by both sexes in cooperation and in essentially equal numbers?

Can both sets of practices and values be right at the same time? Can both sets be wrong at the same time? If the "frenzied 'slave market' in recruiting and paying athletes," as the New York Times puts it, is considered so bad for girls, is it so good for boys? If competing before large crowds and charging admission are considered good for boys, are they really so bad for girls?

May public schools say, "This is what is good for boys" and "This is what is good for girls," meaning, "This is what is good for all boys" versus "This is what is good for all girls"? Can public schools practice two totally different kinds of programs with distinctly separate value systems for their females and males? In short, can schools practice "separate but equal," or in reality, "separate but vastly unequal" for the two sexes in athletics?

We are going to have to stop this inane power struggle--which women most often seem to lose--and get down to the business of creating athletic value systems at the highest administrative levels, preferably with student and community assistance, that will have the total health of both the girls and boys of the school in mind and will be equally applicable to both sexes.

Equal opportunity for the sexes is a philosophical, a legal, an intellectual, and a solvable issue if we can take it out of the realm of emotion. Men will have to realize that women are not trying to kick them out of bed. We are only asking them to move over.

The plain fact is that we are dealing not with organized professional athletics but with the children of the taxpaying public, children made of warm blood and flesh and nerves and easily broken bones, not with men of steel. We are dealing with students and employees, all of whom deserve the Fourteenth Amendment's guarantee of equal protection of the laws--the source of the whole concept of equal opportunity--that is driving so many people, including the powerful NCAA, into wild emotional antics in the name of rationality.

Equal opportunity in public school athletics, as equal opportunity in any other place, is staring us in the face. Its attainment is most similar to that involved in equalizing choral group opportunities, where average real differences seem to be involved but where students must still have access to opportunities regardless of sex. Between the Fourteenth Amendment, the Brown Decision, and the Equal Rights Amendment, not to mention Title IX, there are very few alternatives for us.

By the Fourteenth Amendment, as indicated in Reed v Nebraska School Activities Association in 1972, "a girl may not be treated differently from a boy in an opportunity provided by the state." Therefore, girls have to be able to be admitted to teams which catered only to boys in the past. The new Pennsylvania Supreme Court decision makes clear that the reverse is true also--a boy will have to be admitted to activities of the state participated in only by girls in the past. These rulings prevent de jure--on paper--discrimination. The Pennsylvania decision may have left out two protections needed to prevent de facto discrimination. It forgot to build in a requirement for balancing activities for the sexes, so that if an activity is offered catering primarily to one sex, it will be balanced by one intended mainly for the other; and for keeping one sex from swamping the other by starting a new squad, either predominantly one-sexed or strictly coeducational at some point when one sex threatens to drive out the other. By the Fourteenth Amendment, there is no way that our own state law permitting girls to play in noncontact sports can be taken to mean that they may not play in contact sports with or without boys in the public schools. The law is grossly illegal. For all our years of wasted worry over girls' internal organs and breasts, all available studies show that serious breast injuries simply do not happen. If a woman can win in the Olympics in her fourth month of pregnancy, we do not have to build laws to protect her

fragile internal organs. Maybe baseball should be reclassified as a contact sport from which young boys should be exempt, in view of the all too frequent contact of baseball and groin.

By the Brown decision, "the doctrine of 'separate but equal' has no place in public education." As we have just illustrated at such length, separate has little resemblance to equal for sex as well as race. By this token, Title IX's June guidelines allowing totally separate teams for the sexes and requiring each sex separately to decide in which sports it wishes to participate promotes anything but equal opportunity for males and females. By these guidelines, girls may have one set of activities and boys another from which the opposite sex is totally excluded. These rulings make a mockery of the court decisions all across the country which say that a girl may not be kept from playing on a boys' team. If, perchance, boys have a no-cut policy, meaning that no boy may be cut, there is no way of saying that all girls are to be cut.

By the Equal Rights Amendment, passed by the Michigan Legislature, the same laws have to apply to both sexes. Therefore, Public Act 138 cannot say that girls may play just in noncontact sports, unless it says that boys may play only in noncontact sports, too. There is no way that the law can specify that girls may play on teams with boys without assuring the right of boys to play on teams with girls. This law should also be rewritten to build in balance and to prevent swamping.

Between the Equal Pay Act, Title VII of the Civil Rights Act, Executive Order 11246, and Title IX, no athletic staff member in a Michigan school, public or private, should be subject to the indignities of discrimination women are now enduring.

Well, what constitutes equal opportunity? In general school practices, equal opportunity would aim to maximize the opportunity for students of both sexes and all racial, ethnic, socioeconomic, and ability groups, to name a few, making up the school population to participate in the full range of opportunities of a school. Thus, if we know that Black male students constitute 6% of a school's population, and a vocational program leading, say, to some specialied kind of factory work, contains 88% Black male students, we suspect that for one reason or another, these young men are not being led to explore the totality of opportunity in the school. If girls constitute 51% of a school, and yet a woodworking class contains not a one, we would be led to question their equal access to that opportunity. Affirmative action in each case would have schools take steps to maximize the likelihood that these imbalances will be changed.

Similarly, if we go to the school's track, swimming,

tennis, basketball, or gymnastic meet and see only boys participating on behalf of the schools, we get the feeling that something is missing. The public that pays for the schools has a right to see and to read about how their daughters are progressing at the same time they learn of their sons' successes.

I do not see how we can avoid a concept of equal opportunity in athletics, in keeping with equal opportunity in other aspects of school, that seeks to maximize the opportunity for both sexes, again of all racial, ethnic, and other groups, to represent the school in one configuration or another at the same meets in all feasible sports. Going along with this would be the maximization of the opportunity for females and males in the same competitive brackets to receive the same training in the same facilities by the same staff together or as nearly together as possible. This means that school facilities would be used most completely, with the most equal opportunity, and with the greatest assurance of equal quality, quantity, and goals of training for the sexes if we trained the girls and boys who participate in comparable categories of swimming, basketball, gymnastics, golf, tennis, volleyball, track, and so on at the same time. This means, too, that no matter how many polls MHSAA takes to find out in what season women would like to swim or to play basketball, tennis, or golf, there is no way boys and girls of a school can participate at the same meets if their seasons of sport are different. MHSAA is therefore depriving its young women and young men of the equal opportunity to be part of the same overall teams and the same populations of people by separating their seasons. New Jersey has identical seasons on paper--so it can be done. What MHSAA has to do is to organize its sports groupings to make maximum use of the entire variety of school facilities within each season with a maximum of overlap between the sexes and a minimum of conflict.

Briefly, what does it take to build an equal opportunity athletic framework, if it is all so clear?

First, schools will have to convince themselves, their students, and their communities that their girls' athletic accomplishments and their boys' are of equal priority to the school. They will have to hire coaches who are committed to this goal and can transmit it with conviction to students.

Second, as Title IX's guidelines specify in one of their uncontradicted statements, the athletic program in a school is to be unified for girls and boys. This means that there has to be a maximum of coordination, cooperation, and communication between the females and males involved in the program; preferably led by co-directors, by this or another name, paid at the same rate, working together to administer the entire spectrum of predominantly male, predominantly female, and

strictly coeducational offerings of the school, perhaps with each handling different phases of the responsibility. This is particularly feasible where there are already separate directors of girls' and boys' athletics.

A balancing of offerings for the sexes and a uniformity of values and rules have to be built into the unified program. The same numbers and lengths of games and practices in the same or similar sports, the same distance and means of travel, accessibility to a trainer, to medical examinations, to insurance, and so on have to be budgeted for maximally equal opportunity.

Third, women and men will have to be hired in as nearly equal numbers as possible into a common coaching pool, assisting each other in coaching both sexes in the various squads of a sport or related sports.

Job responsibilities and reasonable numbers and lengths of games and practices for each sport, along with expected goals for student performance have to be defined alike for both women and men so that both can receive the same pay for substantially equal work; and so that no sport is given disproportionate weight in the school system's hierarchy of athletic values. What we pay a person and how many hours we expect a coach to put into the work are the chief indications of the level of performance we expect students to achieve.

Further, interscholastic athletic training and competitive opportunities will have to be available to all "desiring" children of the public regardless of their ability. If the training opportunities of the public schools are not available to young people, it is hard to fit athletics into a school's educational scheme. Team selection should be made after training.

And fifth, students will either have to be welcomed eagerly or at least not be turned away from an opportunity, regardless of their sex. "The Supreme Court's crazy! Everybody knows that boys are bigger and stronger!" said the sport announcer emotionally the other day when the Pennsylvania ruling was handed down. Perhaps the Brenden v Independent School District opinion in Minnesota in 1973 sums it up more clearly than any other in a decision in favor of Toni St. Pierre who wanted to run and Peggy Brenden who wanted to play tennis with boys. "There are...substantial physiological differences between males and females....Men are taller than women, stronger than women, by reason of greater muscle mass, have larger hearts than women and a deeper breathing capacity, enabling them to utilize oxygen more efficiently than women, run faster based upon construction of the pelvic area, which when women reach puberty, widens, causing the femur to bend outward, rendering the female incapable of running as efficiently as a male....But these differences have little relevance to Toni St. Pierre and Peggy Brenden. Because of their

level of achievement in competitive sports they have overcome these physiological disabilities."

Legal concerns now are moving in the direction of guaranteeing the rights of the individual to participate in the offerings of public accommodations as taking precedence over the rights of the group to determine who shall not be allowed to participate with them.

How do we create teams if you cannot turn students away on the basis of sex?

We can use a more or less Olympic style approach, in which the overall team that represents a school at a meet consists of a female component (like a girls' varsity) and a male component (like a boys' varsity) in all feasible sports; but to anticipate the certain pressure for some sexual overlap, the team would really consist of a predominantly male and a predominantly female component. In this case, MHSAA would have to define up to what percentage of the other sex, say 20% to 25%, would allow a component to qualify as predominantly one-sexed versus coeducational and what percentage of the other sex trying to get on a predominantly one-sexed squad would require a school to start an additional component either entirely coeducational or predominantly of one sex, necessary to keep one sex from being swamped. This is cumbersome, but is probably the most reasonable direction for now while schools are used to having separate male and female teams.

We can group students completely on the basis of ability without regard to sex--provided that we have enough ability groups to encompass girls and boys of all levels who want to play, and provided that in all feasible sports both sexes in equitable numbers appear on behalf of the school. For sports catering mainly to one sex, there would have to be parallel ones catering mainly to the other.

Or we can arrange young people in categories by height, weight, other physical characteristics, or combinations of these, as is done in wrestling and sometimes in football, and then rank them by ability in each category.

MHSAA can devise a physical fitness measuring scale on the idea of the President's Physical Fitness Test, but testing both sexes according to the same criteria, and assigning each student an index based on this physical fitness measure in combination with a height-weight or physical development measure. Students would then play in groups with general potential performance similarities. They could move up or down according to their extreme confidence or lack of it in a particular sport.

We can build strictly coeducational interscholastic components like those that are so successful in intramural co-recreation at the college level, with equal numbers of females and males on a squad in many sports.

This comes about as close as you can get to equal training, equal facility usage, equal expenditure, and equal publicity for both sexes. In this case, MHSAA would have to set up a division of coeducational sports.

Or we can build teams based on anything but straight ability--height, weight, these in combination, mixtures of height, mixtures of ability, or interest and pleasure in playing and gaining personal competence. What about winning state championships? Who knows what the power of cooperative enjoyment can do!

We have an exciting challenge ahead of us--to see what our young women are capable of accomplishing in athletics with full encouragement and support, and to build teams of various configurations maximizing the participation of both sexes.

To achieve this, we have to design programs guaranteeing the maximum of equal opportunity for all students and then find ways to get there. The important factor is that the sexes are going to have to work together cooperatively without threatening or overpowering each other to achieve common goals that will be beneficial to both sexes and will allow both to carry the school colors proudly as equal representatives of the school. And we have to make sure both sexes come out winning.

III. THE LEGAL BASIS FOR ATHLETICS AND EVOLVING DEFINITIONS OF EQUALITY

THE ORGANIZATION AND LEGAL BASIS FOR ATHLETICS

Clifford B. Fagan*

Traditionally schools--elementary, high schools, and colleges--have been a natural base for athletic competition. This is, of course, an historic fact universally recognized. It may be due to the age of the students--competitive athletics draw the attention of students, particularly those of high school and undergraduate college ages. As a result, near the end of the 19th century students from one high school challenged those from other high schools in the area. A variety of games was played, and, as time went on, schedules and competition became increasingly formalized. This competition was conducted without any faculty involvement whatever. In fact, the faculty did not even approve of the competition during the early days. Interest grew, competition developed, problems emerged as a result of the interschool competition. Townspeople became involved, winning became more important, and in several areas nonstudents began to represent schools. In other situations, those who participated were students but only during their season of participation.

Faculties soon recognized the need for control of competitive athletics and were able to assume this control only after a struggle to gain it. As competition grew and became more widespread, other abuses became apparent. In order to maintain a dignified program complimentary to the schools, faculties agreed to certain standards for competition. These standards came to be known as rules of eligibility.

As a result of the adoption of rules and standards, schools entered into conferences and leagues not only for the purpose of scheduling games and assigning officials but to make certain that there was uniform application of the rules and common interpretation of the standards. Schools joined the conferences voluntarily. The outgrowth of these many conferences was the formation of State High School Activity or Athletic Associations, as the case may be. For example, the

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the high schools of Illinois and Wisconsin formed state associations during the 1905-06 school year. Thus, the idea of a state-wide association developed in the Midwest. In the East the colleges were much more prominent in the administration of interscholastic athletics than they were in the Midwest or far West. To a degree, this continues to be the case.

The first matter to be determined by the state-wide organization of schools was who could play. But as time went on other standards, other rules, developed as needed. All state associations now have eligibility rules. All of these eligibility rules have some similarity. All were developed because of a recognized need, all were constructed independently and voluntarily by the schools of a given state, and all were the result of experience.

These standards fall into five principal categories which have a degree of interrelationships. Several of the standards have application to more than one category.

The first category includes those rules which are essentially for the protection of the individual student athlete. These include rules which ensure regular academic progress, require that the student athlete be fit to participate, assure that the competition is conducted as safely as possible, limit the number of games during a season so that the student athlete's time is not exploited, and provide that the coach is a certified teacher employed by the Board of Education. The second category contains standards for the protection of the school program. Awards are limited in value, students must justify their transfer from one school to another, the amateur rule is employed, a student athlete is limited in the number of semesters in which he is eligible, and participation is denied the athlete after he reaches a maximum age. The third category of rules may be classified as administrative standards. These spell out the matter of contracting between schools, the limitation of seasons, the number of contests that may be played during a week, and the organization of tournaments which are conducted for the principal purpose of determining a state champion.

Any organization which conducts a high level of good competition must have available qualified officials. Many state associations, in fact the greatest majority of state associations that provide a full compliment of service to their members, prepare officials to work at interscholastic contests. To fulfill this responsibility, the association registers the officials, tests them, trains them, supervises them, and provides them with the necessary literature for the purposes of learning and keeping up with the rules.

The fifth category of standards are those which

are constructed to assure that fair play and sportsmanship prevail at interscholastic contests. Educational benefits are not forthcoming when contests and games are conducted under other than sportsmanlike atmosphere.

In recent years there have been increasing attempts by state and federal governments to become involved in or secure greater control over state high school associations. Legislatures in Colorado and Pennsylvania and the State Department of Education in Montana are exemplary of these attempts. The Department of Health, Education and Welfare's regulations to administer Title IX are an example on the federal level, as were the bills recently introduced in Congress and widely known as the Dellums, Pearson, and Tunney proposal. More recently the legislature in New Mexico considered the adoption of specifications for football helmets. I sincerely believe that the legislature in New Mexico can use its time more appropriately than determining what is an acceptable football helmet. Fortunately, wisdom prevailed, and the proposal died in Committee.

As a result of the encroachment on the part of government into the affairs of voluntary organizations, there may be an increasing need for state associations to establish their legal basis. The National Federation membership is giving serious attention to such a recommendation. The majority of state high school associations are independent and voluntarily responsible to member schools. They often appear to serve them as would a government agency. The schools themselves are the legislative body of a state association; generally each member has one vote and is under the direction of the chief officer of the school--that is the principal or superintendent. State association rules are universally democratically established by the vote of the membership.

Implementation of standards for competition are the responsibility of a board of directors or board of control or an executive committee, as the case may be, elected by the schools. In every state one or more principals serve and vote on this governing board. In most states one or more superintendents also sit on the executive body. In about half the states coaches and/or athletic directors participate. In an increasing number of states, members of the state school board association are ex officio members.

At one time, the rules and standards adopted by the state association legislative and governing bodies were accepted without question. This was the situation for approximately 40 years. The courts upheld the state association rules without exception when there was litigation affecting them. However, the attitude that "rules are for others," along with increasing civil rights awareness, have required that state

associations defend their rules more often and perhaps less successfully than previously.

Three basic questions have been raised over the years in discussion of legal bases of state associations:

1. the authority of local boards of education to become members of a voluntary high school association,
2. the authority of the association to make and to apply rules and standards, and
3. the right of the association to discipline member schools for violation of the rules and standards.

The preponderance of legal opinion supports the position that the local board of education in its discretion, or a principal in his authorized responsibility, may for the best interest of the school, have the school become a member of a high school association. The issue is no longer a question in litigation; it is rather an assumption which most parties in litigation concede. The second and third question, that is, the authority of an association to make and enforce rules, are of more concern and of less certainty.

Perhaps the earliest court action questioning the authority of a state high school association involved the Ohio High School Athletic Association. In 1924, the Ohio Association declared a number of students attending Scott High School in Toledo ineligible. An injunction was sought by the school, but was denied on the grounds that:

a) the school, through the act of the principal, became a bonafide member of the Ohio High School Association and thus became voluntarily subject to its rules and regulations (presently the Ohio association requires that a board of education certify its membership in the state association annually);

b) the Board of Control, in refusing to reinstate the boys of Scott High School, was acting in good faith and was within its rights as provided by the rules and regulations of the association; and

c) under these conditions, the Association Board of Control did not transcend its authority or violate any state law.

In a 1938 landmark case, Morrison v Roberts was the second to involve a state association. Here a high school football player violated the award rule of the Oklahoma High School Athletic Association and the Board of Control declared the player ineligible for football for a one-year period. The Supreme Court of Oklahoma ordered dismissal of the suit and stated: "The plaintiff has many rights as a citizen and as a high school student but has no vested right in eligibility.... There is nothing unlawful or evil in either of those rules (of eligibility) in vesting final authority in the Board of Control."

One of the most significant documents in establishing the authority of state associations was a 1949

opinion by the Wisconsin Attorney General. Three statements are particularly significant in that opinion.

1. "School authorities have power to impose reasonable rules and regulations which must be observed by the pupils as a prerequisite to engaging in interscholastic athletic competition."

2. "When school authorities by proper action take necessary steps which result in the school becoming a member of a voluntary association which has established certain rules and regulations regarding the conduct of interscholastic competition, the effect is to make the rules and regulations of that association those of the school."

3. "Denial or revocation of...privileges of membership of a voluntary association on ground of violation of these rules imposed in accordance with the constitution or by-laws of the association...(are)... proper if the particular penalty applied under the circumstances of each case is reasonable."

The issue of reasonableness of rules has been raised in much litigation involving state high school associations. Courts have generally held that those who are trained in education and administration are charged with the responsibility of developing reasonable rules of participation. In the Brown v Minnesota State High School League case of 1970, the court, upholding the state high school league, explicitly recognized the delegation of authority to school officials when it stated: "In considering the validity of the rules in question we must at the outset view them in context with the total educational process, the responsibility for which rests with officials of our educational institution."

Perhaps the most clear statement upholding the authority of state associations to make and enforce rules was in a 1973 judgment involving the Missouri State High Activities Association and a commercial baseball camp: "Along with entrusting the education of our children to teachers and administrators, we must also entrust the control and supervision of the extracurricular activities incident to that education. Implicit in the responsibility for these activities is the power to make reasonable rules and regulations. We are dealing here with numerous schools which have voluntarily joined an association; as members of this association, they may, by majority vote, enact rules to govern their interaction. It is obvious that chaos would result without such rules. It is also obvious that the members are in the most advantageous position to appreciate the regulations under which they must act to achieve desired goals. The court should not interfere with enactment of those regulations as long as they are reasonable and do not enfringe on public policy or law."

The schools and their personnel should be in the most advantageous position to appreciate the regulations under which they must act to achieve desired goals. This notion is one to which I am irrevocably committed; it is the fundamental reason state associations and the National Federation exist. We must continually call the idea to mind as state and federal courts, state and federal legislatures, state departments of education, and HEW in Washington make attempts to become involved in and assume control over competitive athletics sponsored by educational institutions. Surely people trained in education, knowledgeable in growth and development of boys and girls, should have this responsibility and not politically oriented legislators. School administrators must be the experts in determining the principles which govern interscholastic competition.

That extracurricular participation is a privilege was reinforced by three court decisions during 1973. The first resulted from a case involving the Kentucky High School Athletic Association, which had prohibited a member school from taking part in a regional tournament because the school had exceeded the maximum number of games permitted by the state association. The ruling was challenged in courts, with the plaintiff claiming the school had been denied the right to participate. The judge wisely dismissed the case, stating, "It is a privilege, not a property right, to participate in athletics."

Second, an Iowa student athlete was declared ineligible for athletics by the Iowa High School Athletic Association because he had reached his 20th birthday. He claimed his rights were denied him as a result of the state association's action. The court ruled "Interscholastic athletics is a privilege, not a fundamental interest." The IHSAA rule adopted voluntarily by the schools and after being formulated by school people themselves was upheld. Finally the U.S. Supreme Court gave support to the privilege position in the San Antonio School District v Rodriquez. The majority opinion stated: "Although education is one of the most important services performed by the state, it is not within the limited category of the rights recognized by this court as guaranteed by the constitution." By implication, therefore, it is reasonable to conclude educational athletics do not fall into the category of a right.

The subject includes reference to the legal basis for leagues. In athletic parlance conferences and leagues most often refer to organization, agreement, or plans through which a number of institutions schedule games, assign officials, set admission prices, publicize their events, and establish contest dates and times. Usually conferences and leagues are not involved in the

administration of eligibility rules, the establishment of seasons, or the certification of officials. There is very, very rarely any conflict between the sponsorship of interscholastic athletics as it relates to leagues with a state association. To our knowledge in the long history of interscholastic sports there is but once case in which conference action has been challenged in court. So far this has not been a problem.

RACIAL SEGREGATION IN HIGH SCHOOL ATHLETICS

Rhodell G. Fields*

In 1896, the Supreme Court announced a landmark decision in Plessy V Ferguson (163 US 537) in which it formulated the "separate but equal" doctrine. Under that doctrine, the Court found it constitutionally permissible for a state to provide separate facilities for Blacks and Whites provided that they were substantially equal. This holding legitimized the efforts on the part of many states, especially in the South, to legally mandate the segregation of the races for almost every conceivable purpose.

After Plessy, facilities were separate but seldom equal. Accommodations for Blacks were generally inferior to those provided for Whites. The lack of equal facilities and opportunities for Blacks was clearly evident in the field of education. Black education was not given adequate financial support by the states. Black public schools were frequently housed in inadequate physical structures, were supplied with textbooks that had been discarded by Whites, and were generally understaffed and underequipped.

Plessy remained the law of the land for public school education until Brown v. Board of Education (347 US 483, 1954). In a long-awaited decision, the Court held that segregation of White and Black children in the public schools solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Black children the equal protection of the Laws afforded by the Fourteenth Amendment. Although the Court noted that Black and White schools were historically unequal, it went on to say that segregation on the basis of race was impermissible and deprived minority children of equal educational opportunities even though the physical facilities and other "tangible" factors may have been equal. The Court specifically stated that "separate but equal" had no place in the field of public education.

The Court's decision in Brown caused a great deal of confusion in the states. They professed not to know what was required of them to implement the Court's decision. In 1955, the Court attempted to clarify its decision in Brown v Board of Education (349 US 294).

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In Brown II the Court instructed authorities to take the necessary actions to operate public schools on a racially nondiscriminatory basis with "all deliberate speed." This decision did not provide a standard by which a state's compliance or noncompliance could be effectively measured. After Brown II it was said that states acted with more deliberation than speed. In any event, the number of Black children attending integrated schools in the South was negligible.

From 1965 onward, a number of suits have been initiated to compel various school districts to eliminate all vestiges of segregation in the operation of their schools. Many districts attempted to fulfill their obligations by adopting freedom of choice plans. Black students would have the option of either attending the predominantly Black schools that they were currently enrolled in or they could choose to attend White schools. The courts ultimately found freedom of choice plans unacceptable and instructed Southern states to dismantle their dual school systems.

Athletics are considered by many to be an integral part of the educational process. Participation in athletics aids in the physical and mental development of students. In Monroe v Board of Commissioners, City of Jackson (244 F.Supp. 343; W.D. Tenn 1965) a federal district court held that racial segregation was prohibited with respect to desegregated grades as to all school facilities and as to all curricular activities, including athletics. Other federal courts also mandated that athletics not be operated on a racially discriminatory basis. In Teel v Pitt County Board of Education (272 F.Supp. 703; E.D. North Carolina, 1967) plaintiffs initiated an action for injunctive relief against the County Board of Education's operation and administration of public schools on a racially discriminatory basis. The court ordered that all athletic programs and athletic events in the various schools and in the school system generally be planned and conducted upon a nonracial basis.

When the freedom of choice plans were permissible, the one-year waiting period that disallowed transferees from participation in interscholastic athletics for one year after transfer discouraged many Black students from exercising the option to attend predominantly White schools. A number of suits were brought to suspend the operation of the rule as it applied to Blacks who opted to attend predominantly White schools. In Swann v Charlotte-Mecklenburg Board of Education (300 F.Supp. 1381; W.D. North Carolina, 1969) the court held that the provision of the Board's pupil assignment plan, making high school athletes who transferred from one school to another ineligible for varsity or junior varsity athletics until they had been a year in the new school, was racially discriminatory and directed the

Board of Education not to enforce it any more. The court also stated that the Board was under a duty to give adequate individual notice to all rising 10th, 11th, and 12th grade students that they might reconsider their previous choice of schools in light of the removal of the penalty.

The Arkansas Athletic Association issued an interpretation of the one-year rule to the effect that a student who transferred from a school where his race was in the majority to a school where his race would be in the minority would not be subject to the one-year loss of eligibility if the transfer were made at the student's first opportunity. Ardry Rogers attended an all-Black junior high school during the 7th and 8th grades. He exercised his option to attend a predominantly White school for 9th grade. The athletic association and the school district ruled that he was ineligible to participate in the athletic programs of the new school because his first opportunity to transfer to the White school would have been the 7th grade.

Rogers' parents initiated a suit challenging the ruling. The school board introduced testimony to the effect that the adoption of the rule was not motivated by racial considerations and that controlling athletic recruitment was a legitimate goal of the application of the athletic eligibility rule. In Rogers v Board of Education of Little Rock (281 F.Supp. 39; E.D. Ark. W.D. 1968) the court held that enforcement of the rule constituted a denial of the equal protection of the laws where its operation could only create or add to the reluctance of Black students to attend predominantly White schools. The one-year waiting period was also successfully attacked in Coppedge v Franklin County Board of Education (273 F.Supp. 289; E.D. North Carolina 1967) and Graves v Walton County Board of Education (300 F.Supp. 188; M.D. Georgia 1968).

In most Southern states there were separate athletic associations for predominantly White and predominantly Black schools. For the most part the White associations were more prestigious and organized tournaments for the generally recognized state champions for various sports. Since Black schools were not members, they could not compete on associations' tournaments.

A Black New Orleans high school, St. Augustine, submitted an application for membership to the Louisiana High School Athletic Association. Admission of new members was based solely on the determination of the Executive Committee of the Association. At its 1965 annual meeting, the LHSAA changed its constitution to require a vote in favor of admission by two-thirds of the total number of member schools present at the annual meeting on the application of prospective members. St. Augustine failed to get the required

majority. In St. Augustine High School v Louisiana High School Athletic Association (270 F.Supp. 767; E.D. Louisiana, 1967) the court held that a high school athletic association composed of 400 schools, 85% of which were public schools, which coordinated interscholastic athletics between member schools, was an agency of the state and any action on the part of the Association was "state action" subject to the provisions of the Fourteenth Amendment and the Associations denial of membership to St. Augustine, which met all of the qualifications but failed to obtain two-thirds vote of approval of all of the Association members, violated the equal protection and due process guarantees of the Constitution.

Similarly, in Lee v Macon County Board of Education (283 F.Supp. 194; M.D. Alabama E.D. 1968) a federal district court held that the maintenance of two high school athletic associations, one White and the other Black, operates to discriminate against Blacks, and state officials and athletic associations had an affirmative duty to disestablish the dual system in public schools by merging the two associations.

In many school districts in the North and South, predominantly Black and minority schools have had difficulties in developing schedules for athletic events. Some predominantly White schools that surround many identifiably Black schools evade any athletic contact with those schools. In order to get a full schedule it is often necessary for the Black teams to travel greater than average distances. There is some indication that school boards have a duty to schedule athletic events between schools that can be identified as White and those that are identified as minority or Black. In Davis v Board of School Commissioners of Mobile County (393 F.2d. 690, 1968) the Fifth Circuit Court of Appeals held that the failure to schedule athletic activities between all-Black teams and all-White teams was an intolerable distinction based on race; the integration of activities must be complete.

Grooming codes established for athletes may also discriminate against Black students. Many coaches require that their players be clean shaven. Traditionally, if Black males can support a growth of facial hair on their upper lips, they grow mustaches. Some Blacks have encountered problems with the "Afro" or "natural" hairstyle. In many instances when players refused to comply with grooming codes and were dismissed from various athletic teams, the actions were upheld by the courts. In Nevhals v Torrey (310 F.Supp. 192; N.D. California, 1970) a group of high school athletes brought suit against the superintendent of education of a school district for injunctive and declaratory relief against the enforcement of a school district regulation which established a grooming code

for athletes. The court held that the regulation had a rational and reasonable basis, was not a result of an arbitrary or capricious decision, and did not violate the Fourteenth Amendment.

The Supreme Court has traditionally used a two-tiered test to measure regulations against the Fourteenth Amendment. Cases involving suspect classifications and fundamental interests compel the Court to subject such classifications and interests to strict scrutiny. The state must prove that the purpose of the classification is to vindicate a compelling state interest and that the distinctions made by the state are necessary to achieve that purpose. When the Court subjects a state interest to strict scrutiny, the state almost always loses.

If a suspect classification or a fundamental interest is not involved, the Court uses a rational relation test. Classifications drawn by the legislation have only to be rationally related to some legitimate state purpose. It is not difficult to see that the standard of review adopted by the Court is likely to determine the outcome of a suit.

It is conceded that participation in high school athletics is not a fundamental interest. It is equally clear that grooming code regulations have a rational basis. If the traditional equal protection analysis is used, a court would uphold the regulations. However, there is some indication that the Supreme Court is moving away from its two-tiered approach in equal protection cases and considering an intermediate approach. Instead of looking to see if a fundamental right or a suspect classification is involved, the Court looks at the interests being asserted to determine which interests should be vindicated. The Court would look to see if a regulation bore not only a rational relation to a legitimate state goal but was reasonably expected to accomplish that goal. The Court would also look at the affected party's interest to see if it warranted more protection that the traditional two-tiered test allowed. The Court has used the intermediate approach in a few cases and may make greater use of it in the future.

A federal district court appears to have used an intermediate test in Dunham v Pulsifer (312 F.Supp. 411; D. Vermont). In this case the court held that an athletic grooming code requiring males to wear their hair tapered to the back and on the sides of their heads with no hair over the collar, and with side burns no lower than the ear lobe and trimmed was unconstitutional and asserted justifications based on performance, dissension on teams, discipline, conformity, and uniformity were not substantial enough to justify infringement over the athletes' rights to govern their appearance.

Conclusion

The above cases seem to indicate that all vestiges of segregation must be removed from the sphere of public school athletics. School authorities may not erect barriers whose ultimate effect is to interfere with minority members' participation in athletics. Even regulations that are not motivated by racial considerations but by other legitimate concerns may be successfully attacked if their effect is to adversely affect minority athletes' interests in participating in athletics. As the Warren Court stated in Brown I, "separate but equal" adopted in Plessy v Ferguson has no place in the field of public education.

SEX DISCRIMINATION IN HIGH SCHOOL ATHLETICS: CONSTITUTIONAL REMEDIES

Nancy Barbrow Broff*

The Fourteenth Amendment to the United States Constitution provides that "[n]o State shall . . deny to any person within its jurisdiction the equal protection of the laws." This has been interpreted by the courts to mean that a person cannot be denied the protection of equal laws; that is, the State cannot arbitrarily treat different groups unequally.[1] There are two essential elements to a suit to enforce Fourteenth Amendment rights. The action complained of must have been by a person acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory."[2] This is known as the "state action" doctrine. The second requirement is that the action must have deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States.

There have been seven reported cases involving equal protection challenges to high school athletic league rules which discriminate on the basis of sex.[3] The state action requirement has not presented a problem in these cases. Every decision has held that there is a close enough connection between the league and the state to sustain a finding of state action. The determination of state actions has been based on factors such as league events being held in publicly owned and operated facilities,[4] a requirement that coaches be full-time teachers,[5] a rule-making procedure that involves member school districts in the decision-making process,[6] and membership being primarily composed of state public schools.[7]

Determining that the challenged action has unconstitutionally discriminated against the plaintiff is somewhat more complicated. A court will generally consider three factors in making the determination. The first step is to consider the classification and ascertain what two groups are being treated differently. In order to sustain a finding of a denial of equal protection, there must be two groups which are similarly situated with respect to the law but which are being treated differently. For example, a law stating that

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people with red hair may not play tennis divides people into two classes--people with red hair and all other people. The two groups are similarly situated with respect to the law, since the trait of red hair bears no relation to ability to play tennis. Next, the asserted interests of the plaintiff are examined. To continue with the above example, there is no legally recognized right to play tennis; that is, there is no statute or constitutional provision which protects the right to play tennis. However, there is a constitutional right to be free from arbitrary governmental action (which is what equal protection is all about). So, this law has deprived red-haired persons of a legally protected right. Finally, the asserted state interests are examined to determine whether the discriminatory treatment is justified.

In order to determine whether the discriminatory treatment is justified, courts have developed three different standards of analysis. The most commonly used mode of analysis is known as low scrutiny or deferential review. Under this model, there is a presumption that the law is valid. If a rational relationship between the classification and any conceivable legislative purpose can be found, the law will be upheld. A wide latitude of under- or over-inclusiveness is tolerated. The burden is on the plaintiff to prove that the law is "unreasonable, arbitrary or capricious."

At the other end of the spectrum is the high scrutiny test. When the classification is "suspect"[8] or the plaintiff's interest is "fundamental,"[9] courts scrutinize the law very closely. The presumption is against validity, and the burden is on the defendant to prove that the classification is justified. In order to prevail, the defendant must prove that the classification is necessary to the achievement of a compelling state interest. There is minimal tolerance for under- or overinclusiveness, and if the state purpose could be achieved by less drastic means, the law will be invalidated.

Until recently, courts used this two-tiered approach in deciding equal protection cases. But the choice of a level of analysis almost always determined the outcome. It is practically impossible to invalidate a law using the low scrutiny approach or to uphold a law under the strict scrutiny approach. To remedy this problem, an intermediate approach was developed. Under this model, the court first determines the most probable legislative purpose, then decides whether the classification bears a "fair and substantial relation"[10] to the purpose. Another possible explanation is that the burden of proof is shifted to defendant to show that the classification is rational.[11] This model is often being used in sex discrimination cases.

Of the cases challenging high school league rules which discriminated on the basis of sex, three used the low scrutiny analysis[12] and four used the intermediate approach.[13] The court decided in favor of the defendant in two of the three cases using deferential review, but held in favor of the plaintiff in the four cases applying the intermediate standard. In Ritacco v Norwin School District, 361 F. Supp. 930 (W.D. Pa. 1973), a rule requiring separate girls and boys teams for interscholastic non-contact sports was challenged. The court found that girls had equal opportunities for engaging in sports activities and that allowing "separate but equal" sports opportunities fosters greater participation by girls. The court further stated that "the rule has a rational basis in physiological and psychological differences which exist between males and females."[14]

Bucha v Illinois High School Association, 351 F. Supp. 69 (N.D. Ill. E.D. 1972), involved a challenge to rules which put limits on girls' athletics which were not put on boys' contests and which prohibited competition between the sexes. The court noted that this case did not deal with the absence of a program for girls, but rather probed the rationality of separate programs. The concern that allowing integrated teams would lead to domination by the boys and reduced participation by the girls was held to be sufficient to justify the segregation. Taking judicial notice of the fact that in the Olympics the men's scores are consistently faster than the women's, the court also accepted the physiological differences between the sexes as authorizing the disparate treatment.[15]

There was an indication in the decision that the Bucha court might reach a different result today. In distinguishing the cases dealing with sex discrimination in employment, the court found that the Title VII[16] cases were not relevant to Bucha because the Congress had decided that the economic interest was important enough to warrant legislation to protect it. At the time Bucha was decided, there was no such federal law for education. With the enactment of Title IX of the Education Amendments of 1972,[17] however, equal access to educational opportunity became a Congressionally protected right. It is conceivable that Title IX will have the effect of raising the standard of review used in equal protection cases concerning educational programs.

The third case which apparently used the low scrutiny approach was Morris v Michigan State Board of Education, 472 F. 2d 1207 (6th Cir. 1973). Two girls who wanted to play interscholastic tennis brought suit to overturn a league rule which prohibited mixed competition. The District Court judge, without writing an opinion, granted a preliminary injunction enjoining

the league from enforcing the discriminatory rule with respect to all sports. Subsequently, Michigan enacted a law allowing girls to participate with boys in all non-contact sports. The league appealed the Morris decision, and the Court of Appeals modified the order to apply only to non-contact sports, since there was no controversy in this case about contact sports. Due to the lack of a written opinion by the District Court judge, the type of analysis which was utilized is not known. The Court of Appeals implied that the low scrutiny test was the proper one.

The four decisions using the intermediate level of analysis were all concerned with non-contact sports and all involved situations where there were no separate girls' teams. So, the rationalizations accepted by the courts in Bucha and Ritacco are not applicable to these cases. For example, in Haas v South Bend Community High School Corp., 298 N.E. 2d 495 (S. Ct. Ind. 1972), the plaintiff sued to establish her right to be eligible for the interscholastic golf team, regardless of her sex. In ruling for the plaintiff, the court stated that "[u]ntil girls' programs comparable to those maintained for boys exist, the difference in athletic ability alone is not justification for the rule denying 'mixed' participation in noncontact sports."[18] Similarly, in Gilpin v Kansas State High School Activities Assn., 377 F. Supp. 1233 (D. Kan. 1974), the asserted purpose of the discriminatory rule was to assure a viable girls program. The court found this to be a valid purpose, and if there were separate girls teams the rule arguably would advance that interest. But, in the absence of a girls team, the rule operated to limit rather than to advance girls' opportunities. On this basis, the court held that the defendant had not shown a substantial relation between the rule and the asserted purpose.

One factor that was stressed in these cases was the nature of the plaintiffs' interests. Contrary to the Bucha court, which stated that "participation in interscholastic athletics is not a right guaranteed by the Constitution or laws of the United States,"[19] these courts viewed the plaintiffs' interests as substantial. Athletics were viewed as an integral part of the educational process, equally valuable for girls and boys. The fact that participation in interscholastic athletics is a privilege and not a right is not determinative. As stated in Brenden v Independent School District 742, 477 F. 2d. 1292 (8th Cir. 1973), "The question in this case is not whether the plaintiffs have an absolute right to participate in interscholastic athletics, but whether the plaintiffs can be denied the benefits of activities provided by the state for male students."[20] Likewise, the court in Reed v Nebraska School Activities Assn., 341 F. Supp. 258 (D. Neb. 1972), rejected the

right/privilege dichotomy as a justification for sex segregation in athletics. Granting a motion for a preliminary injunction, the court held that the defendant had not yet come forward with an acceptable rationalization for the rule.

The Brenden decision is perhaps the strongest one from the point of view of women. The plaintiffs were excellent athletes who wished to join the tennis and cross-country teams of their schools. The judge specifically found that the girls were capable of competing with boys and would not be harmed by such competition, and held that the high school league did not show a sufficient rational basis for their conclusion that females are not able to compete with males in non-contact sports. After commenting that success in sports depends on factors such as coordination, concentration, and timing, as well as speed and strength, the judge remarked:

> Essentially, the testimony of those witnesses who concluded that females were wholly incapable of competing with men in interscholastic athletics was based on subjective conclusions drawn from the physiological difference between the sexes by individuals who were not themselves familiar with mixed competition. This subjective testimony is particularly susceptible to discrimination based on stereotyped notions about the nature of the sexes.[21]

The court also cited an experiment conducted by the New York State Department of Education in which mixed competition proved so successful that the regulations were amended to specifically allow it.

The asserted purpose of the classification in Brenden was to assure that persons with similar ability would compete with each other. The court found that the defendant failed to show a sufficiently substantial relation between the sex-based classification and the purpose. The failure to afford the plaintiffs individualized determinations of their ability was found to be a denial of equal protection. It is important to note, however, that the holding was limited to the facts of the case. The court declined to comment on whether separate girls' teams would violate the Equal Protection Clause or whether mixed competition should be extended to contact sports.

To summarize the present state of the law, where there have been equal protection challenges to separate girls and boys teams, the courts have utilized the low scrutiny level of analysis to uphold the segregation. Where the female plaintiffs had no other opportunity to engage in interscholastic athletics, the courts have employed the intermediate approach to allow qualified

girls to join boys' teams. In all of these cases, only non-contact sports were involved, so the question of mixed teams with respect to contact sports is still open. Now that the Little League has integrated its teams, however, the possibility of successful equal protection challenges with respect to other contact sports cannot lightly be dismissed.

The future of equal protection suits is somewhat speculative. If sex is finally declared to be a suspect classification by a majority of the United States Supreme Court, the constitutionality of "separate but equal" sports teams would become doubtful. Segregation of the sexes in sports not only implies that females are inferior to males, it is founded on the assumption of inferiority. And, since most males are better at athletics than most females, separate is never equal.[22] Girls of exceptional ability cannot compete against those of similar ability in a sex-segregated system. The sex-biased classification does not perfectly predict athletic ability. Since the high scrutiny analysis allows only a minimal tolerance for under- or overinclusiveness, the sex segregation would probably be overruled, unless the defendant could bear the heavy burden of proving that the classification is necessary to achieve a compelling state interest and that there is no other way to achieve that purpose by less drastic means. It is not clear whether courts would consider the purpose of preventing boys from dominating both teams and assuring a viable girls' program to be a compelling interest.

A new constitutional remedy will become available if the Equal Rights Amendment achieves ratification.[23] The amendment reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."[24] It is similar to the Fourteenth Amendment in that it requires governmental action, but it establishes a different standard for constitutionally permissible actions. Under the E.R.A., sex-based classifications would be impermissible (with two narrow exceptions, for personal privacy and physical characteristics unique to one sex).[25] That is, neither a "rational basis" nor a "compelling interest" would justify a rule treating men and women differently. So, under the E.R.A.; separate teams for girls and boys would not be permissible. The Commonwealth Court of Pennsylvania recently interpreted the Equal Rights Amendment to the Pennsylvania Constitution to require mixed teams in all interscholastic athletics, including contact sports. The female plaintiff in that case won the right to play on her school football team.[26]

A final note--since Title IX mandates equal educational opportunity regardless of sex, it may appear that constitutional challenges to sex discrimination in athletics will no longer be brought. This

is not true. First of all, it is common practice when bringing a lawsuit to base claims on alternate grounds. Thus, many cases will be brought alleging deprivation of rights secured by both the Fourteenth Amendment and Title IX. Second, the remedies differ. In a successful Title IX suit, the educational institution will lose its federal funds. The institution has the option of deciding to do without federal funds if it wishes to continue the discriminatory practice. Under the Fourteenth Amendment, if the plaintiff prevails, the court orders the educational institution to discontinue the discrimination. And finally, there may be cases which do not fall within Title IX but which are covered by the equal protection doctrine.

Is the right to compete in interscholastic athletics really worth all this fuss? To answer in the words of Simone de Beauvoir:

> Not to have confidence in one's body is to lose confidence in oneself....It is precisely the female athletes, who being positively interested in their own game, feel themselves least handicapped in comparison with the male. Let her swim, climb mountain peaks, pilot an airplane, battle against the elements, take risks, go out for adventure, and she will not feel before the world that timidity.

Notes

[1] Susan C. Ross, The Rights of Women (Discus Books, 1973) at 15.

[2] 42 U.S.C. § 1983.

[3] Brenden v Independent School District 742, 477 F. 2d 1292 (8th Cir. 1973); Morris v Michigan State Board of Education, 472 F. 2d 1207 (6th Cir. 1973); Gilpin v Kansas State High School Activities Assn., 377 F. Supp. 1233 (D. Kan. 1974); Ritacco v Norwin School District, 361 F. Supp. 930 W.D. Pa. 1973); Bucha v Illinois High School Assn., 351 F. Supp. 69 (N.D. Ill. 1972); Reed v Nebraska School Activities Assn., 341 F. Supp. 258 (D. Neb. 1972); Haas v S. Bend Community High School Corp., 289 N.E. 2d 495 (Ind. 1972).

[4] Bucha, supra at 73.

[5] Haas, supra at 497-8.

[6]Brenden, supra at 1295.

[7]Gilpin, supra at 1237.

[8]The classifications that have been deemed suspect are race, national origin, and alienage. Sex has been declared to be a suspect classification by a pleurality (but not a majority) of the United States Supreme Court and by several lower courts. Deciding that sex should be suspect, the California Supreme Court wrote:

> Sex, like race and lineage, is an immutable trait, a status into which the class members are locked by the accident of birth. What differentiates sex from other nonsuspect statuses, such as intelligence or physical disability, and aligns it with the recognized suspect classifications is that the characteristic frequently bears no relation to ability to perform or contribute to society....The result is that the whole class is relegated to an inferior legal status without regard to the capabilities or characteristics of its individual members.... Another characteristic which underlies all suspect classifications is the stigma of inferiority and second class citizenship associated with them (Sail'er Inn, Inc. v Kirby, 5 Cal. 3rd, 1, 485 P. 2d 529, 540, 95 Cal. Rptr. 329, 340 [1971]).

[9]Examples of rights which have been deemed "fundamental" are the right to vote, the right to travel, and the right to raise one's children.

[10]Reed v Reed 404 U.S. 71 (1971).

[11]Brenden, supra at 1300; Reed, supra at 262.

[12]Ritacco, supra, and Bucha, supra.

[13]Brenden, supra; Gilpin, supra; Reed, supra; Haas, supra.

[14]Ritacco, supra at 932.

[15]It is now clear that the physiological differences between males and females are significantly less than had been presumed. Differences in strength within either sex are greater than between them. Women are narrowing the gaps between their performances and those of men. For example, in the 1924 Olympics, the winning time in the men's 400 meter freestyle was 16% faster than the women's winning score. By 1972, the men's lead dropped to only 7.3%. Shane Gould's current

record for the 400 meter freestyle is a pool length faster than Johnny Weismuller's men's record in 1927. See Scott, "Closing the Muscle Gap," Ms. Magazine, September, 1974, p. 49-50.

[16]Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.

[17]20 U.S.C. § 1681 et seq.

[18]Haas, supra at 501.

[19]Bucha, supra at 73.

[20]Brenden, supra at 1297.

[21]Brenden, supra at 1300.

[22]For a discussion of the reasons for not using the "separate but equal" theory, see Note, Sex Discrimination in High School Athletics, 57 Minn. L. Rev. 339, 369 (1972).

[23]Thirty-eight states must ratify in order for the E.R.A. to become part of the Constitution. As of March, 1975, thirty-four states had ratified.

[24]Proposed Amendment to the United State Constitution, S.J. Res. 8, S.J. Res. 9, and H.R.J. Res. 208, 92d Congress, 1st Sess. (1971).

[25]That is, separate restrooms and dressing rooms would be allowed under the personal privacy exception, and laws relating to sperm donors would be permissible under the unique physical characteristics exception.

[26]Decision of the Pennsylvania Commonwealth Court announced on Sports Report, WUOM radio, March 17, 1975.

IV. APPENDICES

APPENDIX A: STATE LAWS AND REGULATIONS

CONSTITUTION OF THE STATE OF MICHIGAN OF 1963

§ 2. Equal protection; discrimination

Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

ARTICLE 8

Free public elementary and secondary schools; discrimination.

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

GENERAL SCHOOL LAWS

340.355 School discrimination; race, color, intellectual progress.

Sec. 355. No separate school or department shall be kept for any person or persons on account of race or color. This section shall not be construed to prevent the grading of schools according to the intellectual progress of the pupil, to be taught in separate places as may be deemed expedient.

HISTORY: New 1955, p. 525, Act 269, Eff. Jul. 1

340.379 Athletic and other associations; membership; conditions; reports.

Sec. 379. (1) A school district may join or permit its schools to join any organization, association or league which has as its object the promotion of sport or the adoption of rules for the conduct of athletic, oratorical, musical, dramatic or other contests by or between school children if the organization, association or league provides in its constitution or bylaws that the superintendent of public instruction or his representative shall be an ex officio member of its governing body with the same rights and privileges as other members of its governing body. The superintendent of public instruction shall report to the legislature before each regular session as to the activities of any such organization, association or league of which he is an ex officio member and shall recommend to the legislature whether any legislation is made necessary by such activities. The association is the official association of the state for the purpose of organizing and conducting athletic events, contests, and tournaments among schools and shall be responsible for the adoption and enforcement of rules relative to eligibility of athletes in schools for participation in interschool athletic events, contests and tournaments.

Female participation in interscholastic athletics.

(2) Female pupils shall be permitted to participate in all noncontact interscholastic athletic activities, including but not limited to archery, badminton, bowling, fencing, golf, gymnastics, rifflery, shuffleboard, skiing, swimming, diving, table tennis, track and field and tennis. Even if the institution does have a girls' team in any noncontact interscholastic athletic activity, the female shall be permitted to compete for a position on the boys' team. Nothing in this subsection shall be construed to prevent or interfere with the selection of competing teams solely on the basis of athletic ability.

HISTORY: Add. 1972, p. 7, Act 2, Imd. Eff. Jan. 31,—Am. 1973, p. 237, Act 136, Eff. Mar. 30, 1973

340.788 Interscholastic athletics; medical care; hospital, medical insurance; fees; liability.

Sec. 788. Boards of education shall have the right to provide medical care, including costs of hospitalization, necessary to provide care for students who are injured during participation in a program of interscholastic athletic activities; and shall have the authority to establish policies regarding provisions for care for injuries sustained while participating in such programs.

Boards of education shall have the right to expend school funds for the employment of qualified persons to provide such care, or for payment for all or a part of the cost of participation in mutual benefit programs or insurance programs to insure protection for students during participation in a program of interscholastic athletic activities.

Boards of education shall have the right to require a fee from participants in such programs for all or a part of the cost of medical care, mutual benefit programs or insurance programs to insure protection for students, providing that no student shall be barred from participation in interscholastic athletic activities because of inability to pay the fee.

Nothing in this section shall be construed to imply the incurrence of liability of any school district, officer, or employee.

HISTORY Add. 1966, p. 31, Act 16, Imd. Eff. Apr. 6

ADMINISTRATIVE RULES

INTERSCHOLASTIC ATHLETICS

(By authority conferred on the state board of education by section 784 of Act No. 269 of the Public Acts of 1955 and sections 14 and 15 of Act No. 287 of the Public Acts of 1964, being sections 340.784, 388.1014 and 388.1015 of the Compiled Laws of 1948.)

R 340.81. Sec. 1. Enrollment.

A. A student must be enrolled in a high school (except as provided in D below) not later than Monday of the fourth week of the semester in which he competes.

B. Members of senior high schools who are housed or enrolled in buildings other than the senior high school may be eligible for membership on senior high school athletic teams provided the local board of education has formally approved the arrangement and that notification of such action has been made to the state director of athletics.

C. Senior high schools are not permitted to use junior high school students, except that senior high schools in classes B, C, D, and E may draw on the ninth grade of junior high schools for athletes when the junior high school is in the same building or in an adjacent building on the same campus. This also may be done by class B, C, D, or E high schools in case there is but 1 senior high school and 1 junior high school in the same city school system regardless of their locations. If the local administration of a class B, C, D, or E high school system includes the ninth grade of a junior high school with the senior high school for athletic purposes, no ninth graders may compete as members of junior high school interscholastic athletic teams (for 1 exception see rules of eligibility for junior high school students, section 12 (B)). In such cases the entire ninth grade enrollment must be included with the high school enrollment for classification purposes.

D. High schools having a total enrollment of less than 75 in grades 9 to 12, inclusive, may use in baseball only, students from the eighth grade of that school.

Schools having not to exceed 10 grades, with enrollment in the high school grades of less than 75 may use, in baseball only, seventh and eighth grade students when they are competing against like schools.

HISTORY 1944 ACS 10, p. 22, 1944 ACS 36, p. 36, 1944 ACS 39, p. 21, 1954 AC, p. 3009

R 340.82. Sec. 2. Age.

A student who competes in any interscholastic athletic contest must be under 19 years of age except that a student whose nineteenth birthday occurs on or after September 1 of a current school year is eligible for the balance of that school year.

HISTORY 1944 ACS 10, p. 22, 1944 ACS 23, p. 6, 1944 ACS 36, p. 38, 1954 AC, p. 3010

R 340.83. Sec. 3. Physical examinations.

No student shall be eligible to represent his high school for whom there is not on file with the superintendent or principal, a physician's statement for the current school year certifying that the student has passed an adequate physical examination and that, in the opinion of the examining physician, he is fully able to compete in athletic contests.

HISTORY 1944 ACS 10 p 22 1954 AC p 3910

R 340.84. Sec. 4. Seasons of competition.

No student, while enrolled in a 4-year high school, shall be eligible to compete for more than 4 seasons in either first or second semester athletics; or for more than 3 seasons in either semester while enrolled in a 3-year high school.

HISTORY 1944 ACS 10 p 22, 1954 AC, p 3910

R 340.85. Sec. 5. Semesters of enrollment.

No student shall compete in any branch of athletics who has been enrolled in grades 9 to 12, inclusive, for more than 8 semesters. The seventh and eighth semesters must be consecutive. Enrollment in a school for a period of 3 weeks or more, or competing in 1 or more interscholastic athletic contests, shall be considered as enrollment for a semester under this rule.

HISTORY 1944 ACS 10 p 22, 1954 AC, p 3910

R 340.86. Sec. 6. Undergraduate standing.

No student shall compete in any branch of athletics who is a graduate of a regular 4-year high school or who is a graduate of a secondary school which has the same requirements for graduation as a regular 4-year high school. However, a student who finishes the required number of hours for graduation in less than 8 semesters shall not be barred from interscholastic athletic competition, while doing undergraduate work, until the end of the eighth semester as far as the provisions of this section are concerned.

HISTORY 1944 ACS 10 p 22, 1944 ACS 23 p 6, 1954 AC p 3910

R 340.87. Sec. 7. Previous semester record.

A. No student shall compete in any athletic contest during any semester who does not have to his credit on the books of the school he represents at least 15 credit hours of work for the last semester during which he shall have been enrolled in grades 9 to 12, inclusive, for a period of 3 weeks or more, or during which he shall have taken part in any interscholastic athletic contests.

B. In determining the number of hours of credit received during a semester under this rule, the usual credit allowed by the school shall be given. However, reviews and extra-curricular work, and work for which credit previously has been received, shall not be counted. Deficiencies, including incompletes, conditions, and failures from a previous semester may not be made up during a subsequent semester, summer session, night school, or by tutoring, for qualification purposes that semester.

C. The record at the end of the semester shall be final for athletic purposes, except that conditions or incompletes, resulting from inability to finish the work of the semester on account of disabling illness during the last 2 weeks of the semester, or for other reasons equally valid during the same period, may be removed after the close of the semester, provided application is made to the state director by the superintendent or principal. In such cases it is to be certified that the student was in attendance and carried his work successfully and continuously up to within 2 weeks of the end of the semester.

HISTORY 1944 ACS 10 p 22 1944 ACS 23 p 6, 1954 AC p 3910

R 340.88. Sec. 8. Current semester record.

No student shall compete in any athletic contest who does not have a passing grade, from the beginning of the semester to the date 7 calendar days prior to the contest, in studies aggregating at least 15 credit hours per week. In determining the number of hours credit per week under this rule, reviews and extra-curricular work, and work for which credit previously has been received, shall not be counted.

HISTORY 1944 ACS 10 p 23 1944 ACS 23 p 6 1944 ACS 36 p 36, 1954 AC p 3910

ELIGIBILITY FOR SENIOR HIGH SCHOOL STUDENTS

R 340.89. Sec. 9. Transfers between schools.

A. A student who transfers from 1 high school or junior high school to another high school is ineligible to participate in an interscholastic athletic contest for 1 full semester in the school to which he transfers, except that the following students may be declared eligible:

(1) A student who moves into a new district or school service area with the persons with whom he was living during his last school enrollment.

(2) A student who moves into a district or school service area and resides with his parents in that district or area.

(3) A student who is a ward of the court or state and is placed in a district or school service area by court order. Guardianship does not fulfill this requirement unless the principal of each of the 2 schools involved certifies that there was no undue influence for athletic purposes.

(4) A foreign exchange student who is placed in a district or school service area by a bonafide exchange program.

(5) A student who marries and establishes a new residence in a new district or school service area.

(6) A student who transfers to another school because his school ceases to operate.

(7) A student in attendance at a school designated by the governing body of that school as the result of reorganization, consolidation or annexation, or at the public school in the district where he resides.

(8) A student from a broken home, and the principal of each of the 2 schools involved certifies that there was no undue influence for athletic purposes.

(9) A student who transfers for educational reasons, and the principal of each of the 2 schools involved certifies that there was no undue influence for athletic purposes.

(10) A student ordered transferred within a school system, for other than athletic purposes, by a board of education or the governing body of a private or parochial school system.

(11) A student who enters the ninth grade of a 4 year high school and has not been previously enrolled in the ninth grade.

(12) A student who completes the last grade available in the school system previously attended.

B. A full semester is defined under this rule as 1 in which a transfer occurred not later than Monday of the fourth week of the semester.

HISTORY 1944 ACS 10, p. 23, 1944 ACS 36, p. 38, 1944 ACS 39, p. 23, 1954 AC, p. 3911; 1954 ACS 67, p. 41.

R 340.90. Sec. 10. Awards.

A. A student shall be ineligible for interscholastic athletic competition if he accepts from any source anything for participation in athletics other than a trophy as defined in this rule.

B. "Trophy" means a medal, ribbon, badge, plaque, cup, banner, picture, or ring. No trophy shall exceed $5.00 in value. The acceptance of the regular school letter award does not render a student ineligible under this rule but a school may make only 1 award to a student per sport season.

C. Banquets, luncheons, dinners, trips, and admissions to athletic events, if accepted in kind, shall not be prohibited under this rule.

D. A student will render himself ineligible under this rule if he accepts awards in violation of its provisions only in the following activities: Baseball, basketball, boxing, cross country, football (11-man, 8-man, or 6-man), golf, gymnastics, ice hockey, skiing, soccer, softball, swimming, tennis, track, or wrestling.

E. A student violating sections A, B, C, or D of this rule shall be ineligible for interscholastic athletic competition for a period of not less than 1 full semester from the date of his last violation.

F. A full semester is defined under this rule as 1 in which a violation occurs not later than Monday of the fourth week of the semester. If the violation occurs after Monday of the fourth week of a semester a student is ineligible for the balance of that semester and the succeeding semester.

HISTORY: 1944 ACS 10, p. 23, 1944 ACS 23 p. 7; 1944 ACS 36 p. 41; 1944 ACS 39, p. 23; 1954 AC, p. 3911, 1954 ACS 31, p. 21; 1954 ACS 51, p. 31.

R 340.91. Sec. 11. Amateur practices.

A. No student shall be eligible to represent his high school who: (1) Has received money for participating in athletics, sports, or games listed in section B; (2) has received money or other valuable consideration for officiating in interscholastic athletic contests; or (3) has signed a contract with a professional baseball team.

B. A student will render himself ineligible under this rule if he violates its amateur provisions only in the following activities: Baseball, basketball, boxing, cross country, football (11-man, 8-man, or 6-man), golf, gymnastics, ice hockey, skiing, soccer, softball, swimming, tennis, track, or wrestling.

HISTORY: 1944 ACS 10, p. 23; 1944 ACS 36, p. 38; 1944 ACS 39, p. 23; 1954 AC, p. 3911; 1954 ACS 31, p. 21.

R 340.92. Sec. 12. Limited team membership.

A. A student who, after participating in an athletic contest as a member of a high school athletic team, participates in any athletic competition not sponsored by his high school in the same sport during the same season, shall be ineligible for the remainder of that season in that sport.

B. A student who has represented his high school in basketball after February 15 may not participate in any outside basketball competition during a current school year after that date (February 15). Participation in such outside competition will affect a high school student as follows: (1) If he is enrolled in his seventh or eighth semester in grades 9 to 12, inclusive, he will be ineligible in all sports for the balance of his high school career; (2) if he has been enrolled in the above grades for 6 or less semesters he will be ineligible only for participation in interscholastic basketball during his succeeding school year.

C. A student who has represented his high school in football or basketball during the current school year, may not compete on any "all-star" team in either of these sports, regardless of its method of selection, in so-called "all-star" charity, exhibition, or other similar type of game. Participation in such a game by such a high school student shall render him ineligible for all interscholastic athletics for a period of 1 year of school enrollment from the date of his first violation of this rule.

HISTORY 1944 ACS 10 p 23, 1944 ACS 23 p 5, 1944 ACS 36 p 39, 1954 AC p 3911

CONTESTS BETWEEN SENIOR HIGH SCHOOLS

R 340.101. Sec. 1. Competition limited to eligibles.

No high school shall enter any athletes or athletic teams in any contest unless the athletes or athletic teams of such high school shall be eligible under RULES OF ELIGIBILITY FOR SENIOR HIGH SCHOOL STUDENTS; nor shall any high school knowingly permit its athletes or athletic teams to compete with another school in a game or contest in which an ineligible athlete is used. This rule also applies to reserve teams.

HISTORY 1944 ACS 10 p 24

R 340.102. Sec. 2. Manager of teams responsible to superintendent or prineipal.

The superintendent of schools or principal of the high school or that member of the faculty designated by either of them, shall be manager of the teams representing the school.

HISTORY 1944 ACS 10 p 24

R 340.103. Sec. 3. Final management of teams.

The final management of all interscholastic athletics shall be in the hands of some member or members of the faculty who shall sign all contracts.

HISTORY 1944 ACS 10 p 24

R 340.104. Sec. 4. Coaches of teams.

A. The person responsible for the immediate training or coaching of a high school athletic team should be a member of the regular teaching staff of the school. If a non-faculty member is used he must be registered by the school in the office of the state director on a form provided for that purpose before he begins his duties. Such non-faculty member coaches must be at least 21 years of age or have completed 2 or more years of college work.

B. All coaches (head and assistants) of interscholastic athletic teams in class A high schools shall hold teaching certificates which would qualify them as teachers in the high school whose teams they are coaching.

C. Coaches of girls interscholastic athletic teams shall be women.

HISTORY 1944 ACS 10 p 24, 1944 ACS 23 p 7, 1944 ACS 36 p 39

R 340.105. Sec. 5. Exchange of eligibility lists.

A. Five days prior to the first game in each season each high school shall submit to all scheduled opponents and to the office of the state director, a master eligibility list (form-1) of all students eligible for that sport under the provisions of these rules, including current semester record. Additions to the squad will be certified at once to competing schools in a similar manner on an additional master eligibility list. Also, in those sports which carry over into 2 semesters, an additional master list is to be submitted at the opening of the second semester to each remaining school on the schedule and to the office of the state director.

B. Subsequently for each succeeding game, a current eligibility list (form-2) carrying names of eligible students only will be submitted to schools concerned 5 days prior to the contest.

C. These lists shall be certified by the superintendent of schools or the principal of the competing high school. Certification shall be based on complete information concerning the student's age, athletic and scholastic status. Questionable cases shall be referred to the state director before the privilege of competition is given.

HISTORY: 1944 ACS 10, p. 24

R 340.106. Sec. 6. Contests with out-of-state schools.

No high school shall schedule or play a game with a school in another state unless that school is a member in good standing in its state association, provided it is eligible to such membership.

HISTORY: 1944 ACS 10, p. 24

R 340.107. Sec. 7. Use of registered officials.

High schools may use in games in the sports concerned only those athletic officials who are registered with the state association for the current year in football, basketball, and baseball. The referee and/or starter used in all interscholastic swimming or track and field meets must be registered for the current year in that sport.

HISTORY: 1944 ACS 10, p. 24; 1944 ACS 23, p. 7.

R 340.108. Sec. 8. Football practice and competition.

A. In a lower peninsula high school football practice or interscholastic football competition is prohibited between December 1 of one year and Monday of the second week preceding Labor day of the following year. In an upper peninsula high school football practice or interscholastic football competition is prohibited between the conclusion of the first weekend in November of one year and Monday of the fourth week preceding Labor day of the following year, except that an upper peninsula high school competing in football with lower peninsula high schools in a majority of its games and beginning practice as limited for lower peninsula schools may terminate its competition before December 1. If practice is conducted during the first week allowed, football equipment shall be limited to footballs, helmets and football shoes during that week.

B. A high school team shall not play a game of football until it has practiced for a period of 3 weeks, except that the initial week of allowed practice is optional and does not count as 1 of the required 3 weeks of practice. The first game may be played on Friday or thereafter of the third week only in case practice was started on Monday of the first week to be counted.

C. There shall be no football scrimmage or competition except between teams composed exclusively of junior or senior high school students who represent high schools in such scrimmage or competition. However, ninth grade students representing the school in which they are enrolled may compete as members of or against junior high school teams on which there are seventh or eighth graders, or both, if the games are played under rules governing junior high school football.

D. Prior to a school's first scheduled interscholastic football game of a current school year there may be not more than 1 practice or scrimmage session which involves other than students of that school exclusively.

HISTORY: 1944 ACS 10, p. 24; 1944 ACS 23, p. 8; 1944 ACS 36, p. 39; 1944 ACS 39, p. 22; 1954 AC, p. 3913; 1954 ACS 24, p. 20; 1954 ACS 51, p. 31; 1954 ACS 63, p. 21; 1954 ACS 65, p. 17.

R 340.109. Sec. 9. Post-season contests—football and basketball.

There are to be no post-season contests in football or basketball. The football season is to be concluded by December 1 in lower peninsula schools and by the first weekend in November in upper peninsula schools (See section 8 [A]). The basketball season is to terminate with the final date of the state basketball tournament if the school does not enter tournament play. For those schools which enter state association tournaments, the basketball season ends with the last tournament game it plays. After a school participates in state association basketball tournament play, it may take part in no other basketball competition for the balance of the current school year, except as provided in regulation V, section 3 (D).

HISTORY: 1944 ACS 10, p. 25; 1944 ACS 23, p. 8; 1954 AC, p. 3912; 1954 ACS 24, p. 20.

R 340.110. Sec. 10. Limitations of competition.

A. A student may compete in not more than 1 game of interscholastic football in 5 consecutive calendar days except by permission of the state director.

B. No student may compete in more than 1 game of interscholastic basketball per day, and in not more than 2 games per week during the regular season.

C. A student may compete in 1 interscholastic basketball game during a calendar week (Monday to Monday), and in addition, may participate in not more than 1 game in an approved county, league, or invitational tournament during that week. Students

participating in a state association tournament may compete in no other basketball game during the week of that tournament (Monday to Monday).

D. A contestant shall not compete in events in 2 track meets held on the same date which would be in violation of these limitations of competition for 1 meet. Likewise, a contestant shall not compete in events, in violation of these limitations of competition, in a track meet which extends over 2 or more days. Neither shall a contestant compete in events in separate track meets held on successive days if such participation would be in violation of these limitations of competition for 1 meet. Limitations of competition in regional and final track and field meets also are applicable to all other interscholastic track and field meets as follows:

1. A contestant shall not enter nor compete in more than 4 events, of which a maximum of 3 may be track events.

2. When a contestant runs any distance of 440 yards or more, up to and including a 1-mile maximum, and is in another track event, at least 2 track events shall intervene between the 2 in which he competes.

3. A relay race is considered 1 of the number of events which a contestant may enter. After the first man of a relay team starts a race he and the other members of the team are charged with participation in that event even though he or they may not actually have run any or all of their full distances in it.

4. Participation in a preliminary heat counts as competition in an event.

5. A contestant who participates in the 880-yard or 1-mile run shall not be allowed to participate in any other track event in which he runs 880 yards or more.

6. A contestant who participates in a 2-mile run shall not be allowed to participate in any other track event.

E. A contestant in swimming may compete in not more than 2 events. Diving is considered as an event.

F. A contestant in tennis may compete either in the singles or doubles, not both.

G. A contestant in a cross country meet may not run a distance greater than 2½ miles.

H. If a student competes in a meet, match, or tournament in violation of any of these limitations of competition, all points earned by him, or by a relay team of which he may have been a member, in that meet or tournament are to be declared forfeited.

I. There shall be no interscholastic competition in boxing.

HISTORY: 1944 ACS 10, p. 25; 1944 ACS 23, p. 8; 1944 ACS 36, p. 39; 1954 AC, p. 3913; 1954 ACS 24, p. 20; 1954 ACS 31, p. 22; 1954 ACS 51, p. 31; 1954 ACS 63, p. 21; 1954 ACS 64, p. 51.

R 340.111. Sec. 11. Maximum number of games in football and basketball; beginning of basketball season; early season basketball practice and scrimmage sessions.

A. A high school may have any number of teams but no football team may play more than 9 games. No basketball team may play more than 18 games. Schools having both football and basketball may play a combined schedule in these 2 sports of not to exceed 24 games for each of its varsity, reserve or other teams. Effective as of the beginning of the 1964-1965 school year, schools having both football and basketball may play a combined schedule in these 2 sports of not to exceed 25 games for each of its varsity, reserve, or other teams.

B. A high school which does not sponsor football may have a schedule of not to exceed 18 basketball games for each of its teams.

C. A lower peninsula school sponsoring football may play its first boys' basketball game on any date during the week in which Thanksgiving day occurs. An upper peninsula school, regardless of its sponsorship of football, and a lower peninsula school not sponsoring football may play its first boys' basketball game November 15, or thereafter. A girls' basketball team may compete any time during the school year.

D. Before a school's first scheduled basketball game of a current school year, there may not be more than 1 practice or scrimmage session for the boys' team and 1 for the girls' team which involves other than students of that school exclusively.

HISTORY: 1944 ACS 10, p. 25; 1944 ACS 23, p. 9; 1944 ACS 36, p. 39; 1944 ACS 39, p. 22; 1954 AC, p. 3914; 1954 ACS 35, p. 48; 1954 ACS 71, p. 35.

R 340.112. Sec. 12. "All-star" contests — football and basketball.

A. No athletic director, coach, teacher, or administrator of a Michigan high school, and no athletic official registered with the Michigan high school athletic association shall at any time, assist either directly or indirectly with the coaching, management, direction, selection of players, promotion, or officiating of any "all-star" or similar contest in football or basketball in which 1 or more of the competing teams is composed of a player or players, who, during the previous school year, were members of a high school football or basketball team.

B. Any high school which uses an individual as a coach or manager of an interscholastic athletic team who has violated the provisions of section A of this rule shall be subject to probation or suspension.

C. Any individual who violates the provisions of section A of this rule shall be ineligible for registration as an athletic official with the Michigan high school athletic association for a period of at least 1 year.

HISTORY 1944 ACS 10, p 25

VIOLATIONS BY SENIOR AND JUNIOR HIGH SCHOOLS

R 340.161. Sec. 1. Protests.

Protests concerning violations should be submitted in writing to the state director and be signed by the principal of the junior or senior high school or the superintendent of schools. Definite evidence upon which the protest is based should be stated in the letter.

HISTORY 1944 ACS 10, p 29

R 340.162. Sec. 2. Failure to keep contracts.

Failure on the part of a junior or senior high school to fulfill a contract, properly signed by the superintendent, principal, or faculty manager, may subject a school to probation or suspension.

HISTORY 1944 ACS 10, p 29

R 340.163. Sec. 3. Approved meets or tournaments.

A. A junior or senior high school conducting or competing in any meet or tournament not approved by the state director shall be liable to probation or suspension.

B. Participation will be permitted in 1 county, league, or invitational basketball tournament by a school. Such tournament participation counts as 2 of its allowed number of games which may be played during the regular basketball season, regardless of the number of games played in such a tournament.

C. A student may compete in 1 interscholastic basketball game during a calendar week (Monday to Monday), and in addition, may participate in not more than 1 game in an approved county, league, or invitational tournament during that week. Students participating in a state association tournament may compete in no other basketball game during the week of that tournament (Monday to Monday).

D. County, invitational, or league basketball tournaments must be concluded not later than 2 weeks prior to the week-end of state association district tournaments; except that junior high schools and reserve teams of senior high schools may participate in 1 such approved tournament provided it is concluded not later than the final date of the state basketball tournament.

HISTORY 1944 ACS 10, p 29; 1944 ACS 23, p 11; 1944 ACS 39, p 23

R 340.164. Sec. 4. Forfeiture of games.

Accidental, intentional, or otherwise use of ineligible players may result in forfeiture by a junior or senior high school of all games in which that or those ineligible players participated. Any league or association of schools may, by notification to the state director, determine the standing of schools within its own league or organization with reference to forfeiture.

HISTORY: 1944 ACS 10, p. 28

CONSTITUTION OF THE MICHIGAN HIGH SCHOOL ATHLETIC ASSOCIATION

The following constitution was originally adopted December 4, 1924. Many revisions have been consummated over the years.

ARTICLE I—NAME

The name of this organization shall be the Michigan High School Athletic Association (M.H.S.A.A.).

ARTICLE II—MEMBERSHIP AND CLASSIFICATION

Sec. 1. All high schools, junior high schools, or other schools of Michigan doing a grade of work corresponding to such schools, may become members of this organization.

Sec. 2. The Representative Council shall have the power to classify schools as a basis for competition in interscholastic contests.

ARTICLE III—ANNUAL BUSINESS MEETING

Sec. 1. The Annual Business Meeting of representatives of member schools of this Association shall be held not later than the third Friday following Thanksgiving Day each year.

Sec. 2. The Annual Business Meeting shall be held for the purpose of receiving reports from the several officers of the Association, discussing interscholastic athletic problems, and electing representatives to the Council in case of tie votes.

Sec 3. Each member school of this Association shall be entitled to only one vote to be cast by the principal or superintendent or a faculty representative authorized in writing by the principal or superintendent.

ARTICLE IV—THE REPRESENTATIVE COUNCIL: HOW CONSTITUTED AND ELECTED

Sec. 1. The Representative Council shall consist of fourteen elected members and the Superintendent of Public Instruction or his representatives as an ex-officio member.

Sec. 2. Five members of the Council shall be representatives of Class A and B high schools according to the report made to the Superintendent of Public Instruction for the school year next preceding the election. One of these representatives shall be from the Northern Peninsula, one from the four southern tiers of counties east of a line running north and south between the counties of Eaton and Ingham, exclusive of the city of Detroit, one from the four southern tiers of counties west of said line, one from the remaining part of the Southern Peninsula, and one from the city of Detroit.

Sec. 3. Four members of the Council shall be representatives of Class C and D high schools according to the report made to the Superintendent of Public Instruction for the school year next preceding the election. One of these representatives shall be from the Northern Peninsula, one from the four southern tiers of counties east of a line running north and south between the counties of Eaton and Ingham, one from the four tiers of counties west of said line, and one from the remaining part of the Southern Peninsula.

Sec. 4. The other five members of the Council shall be from the state at large with the following provisions:

Two shall be teachers or directors of physical education, two shall be a representative of junior high schools, and one shall be a representative of parochial high schools.

Sec. 5. The regularly elected members of the Council as provided for above shall hold office for two years or until such time as their successors are duly elected.

Sec. 6. All nominations for membership on the Representative Council shall be made by mailed ballot prior to the Annual Business Meeting by the groups or sections in which vacancies are to occur. If any nominee receives a majority of all votes cast by his group or section his nomination shall constitute election. If no nominee receives a majority on this ballot the names of the two nominees (or more in case of ties) receiving the greatest number of votes shall be submitted to

the group or section concerned for election by mailed ballot. The nominee receiving a majority on this ballot shall be declared elected. In case of a tie vote the election shall be carried to the Annual Business Meeting.

Sec. 7. A vacancy on the Representative Council occurs when for any reason a representative becomes no longer eligible to represent his particular group or section. Such vacancies shall be filled by a mailed vote of the entire membership of that group or section. The person receiving the greatest number of votes shall be declared elected for the balance of the term vacated.

Note: Procedure in Nomination and Election of Candidates for Membership on Representative Council:

1. Nomination ballots are to be sent to schools eligible to vote for nominees not later than November first of each year.
2. Ballots received from schools at the office of the State Director postmarked a date later than two weeks after they were sent to schools will not be counted.
3. A Board of Canvassers composed of five members is to be appointed annually for the purpose of counting the ballots and declaring candidates elected or those nominees whose names shall appear on the election ballot.
4. The classification of schools for nominations is to be based on the school enrollment as reported on the Classification Information Cards filed in the office of the Superintendent of Public Instruction in November of the previous year.
5. Any school having a high school department is eligible to vote in its particular classification.
6. In Class A, B, and C schools the ballot is to be signed by the principal of the high school and the superintendent of schools or, in connection with the latter, by his authorized representative. If the principal is the authorized representative of the superintendent in this instance, he shall sign the ballot in both spaces provided thereon. Ballots signed in only one of the provided spaces are to be declared illegal votes by the Board of Canvassers.
7. In Class D schools the superintendent is to sign the ballot.
8. Only those junior high schools which are listed by the Department of Education are eligible to vote and in such schools the ballot is to be signed by the principal of the junior high school and the superintendent of schools or, in connection with the latter, by his authorized representative. If the junior high school principal is the authorized representative of the superintendent in this instance, he shall sign the ballot in both spaces provided thereon. Ballots signed in only one of the provided spaces are to be declared illegal votes by the Board of Canvassers.
9. All schools, including junior high schools, which are eligible to vote for candidates from the Physical Education Group are those which are recognized by the Department of Education as having a physical education program. In these schools the ballot is to be signed by the principal of the high school and the superintendent of schools or, in connection with the latter, by his authorized representative. If the principal is the authorized representative of the superintendent in this instance, he shall sign the ballot in both spaces provided thereon. Ballots signed in only one of the provided spaces are to be declared illegal votes by the Board of Canvassers.
10. In private and parochial schools the ballot is to be signed by the principal.

ARTICLE V—MEETINGS OF THE COUNCIL

Sec. 1. Meetings of the Council shall be held at least once a year.

Sec. 2. Meetings of the Council may be called by the Superintendent of Public Instruction or by the President of the Council, and shall be called at the written request of any three members.

ARTICLE VI—DUTIES OF THE COUNCIL

Sec. 1. The Council shall have general control of interscholastic athletic policies.

Sec. 2. It shall make rules of eligibility for players.

Sec. 3. It shall make regulations for the conduct of interscholastic contests.

Sec. 4. It may discipline member schools, contest officials, and athletes for violations of rules and regulations.

Sec. 5. It shall provide for the hearing of appeals from decisions of the State Director of Interscholastic Athletics.

Sec. 6. It shall exercise all other functions necessary for carrying out the spirit and purpose of this Constitution.

ARTICLE VII—OFFICERS OF THE COUNCIL

Sec. 1. The officers of the Council shall be a President, Vice-President and a Secretary-Treasurer.

Sec. 2. The President, the Vice-President, and the Secretary-Treasurer shall be elected by ballot at the first meeting of the Council following the Annual Business Meeting. They shall perform the usual duties pertaining to their respective offices. The President shall preside at the Annual Business Meeting.

ARTICLE VIII—APPOINTMENT AND DUTIES OF THE STATE DIRECTOR OF INTERSCHOLASTIC ATHLETICS

Sec. 1. The State Director of Interscholastic Athletics shall be appointed by the Superintendent of Public Instruction with the advice and approval of the Council.

Sec. 2. The State Director of Interscholastic Athletics shall be the executive officer in control of interscholastic contests, subject to the advice of the Council.

Sec. 3. He shall receive reports and keep records as directed by the Council.

Sec. 4. He shall do everything in his power to develop a high type of sportsmanship among schools, athletes, and the general public.

ARTICLE IX—FINANCES

The Council shall have power to make arrangements with the Department of Education for meeting the expenses incident to carrying on the work of the Association.

ARTICLE X—BY-LAWS

The Council shall make such by-laws as may be necessary in carrying out the provisions of this Constitution.

ARTICLE XI—AMENDMENTS

This Constitution may be amended by two-thirds vote of the member schools represented at any Annual Business Meeting, provided notice of any proposed amendment shall have been given to all member schools of the Association not less than two weeks previous to said meeting or by a two-thirds vote of the ballots returned when mailed to member schools and counted not less than two weeks after mailing.

APPENDIX B: FEDERAL LAWS AND REGULATIONS

CONSTITUTION OF UNITED STATES

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTORY EXCERPTS

Race or national origin discrimination (Title VI)

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance

Pub L 88-352, Title VI, § 601, July 2, 1964. 78 Stat 252.

Employment discrimination- race,sex,national origin (Title VII)

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Sex discrimination (Title IX)

(a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

RULES AND REGULATIONS

§ 86.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub L. 93-380, 88 Stat 484)

APPENDIX C: BIBLIOGRAPHIES

A LEGAL-EDUCATIONAL BIBLIOGRAPHY*

XXI. DISCRIMINATION IN EXTRA-CURRICULAR ACTIVITIES

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